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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as  
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-Section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए संवैधानिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than  
the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

सूचनाएं

नई दिल्ली, 13 मई, 1991

का.आ. 1482.—नोटरीज नियम, 1956 के नियम 6 के  
अनुसरण में मशम प्राधिकारी द्वारा यह सूचना दी जाती है  
कि श्री के.पी. लाथ ने उक्त प्राधिकारी को उक्त नियम के  
नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है  
कि उसकी कलकत्ता में व्यवसाय करने के लिये नोटरी के रूप में  
नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के  
प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास  
भेजा जाये।

[सं. 5(26)/91-न्या.]

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTICES

New Delhi, the 13th May, 1991

S.O. 1482.—Notice is hereby given by the Competent  
Authority in pursuance of rule 6 of the Notaries, 1956, that  
application has been made to the said Authority, under rule 4  
of the said Rules, by Shri K. P. Lath for appointment as a  
Notary to practise in Calcutta.

2. Any objection to the appointment of the said person  
as a Notary may be submitted in writing to the undersigned  
within fourteen days of the publication of this Notice.

[No. F. 5(26)/91-Judl.]

नई दिल्ली, 14 मई, 1991

का.आ. 1483.—नोटरीज नियम, 1956 के नियम 6 के  
अनुसरण में मशम प्राधिकारी द्वारा यह सूचना दी जाती  
है कि श्री वी.वाई. जैकब ने उक्त प्राधिकारी को उक्त

नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसकी आई.टी.ओ. दिल्ली में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाये।

[सं. फा. 5(34)/91-न्या.]

New Delhi, the 14th May, 1991

S.O. 1483.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri B. Y. Jacob, Advocate for appointment as a Notary to practise in I.T.O. Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(34)/91-Judl.]

का.आ. 1484.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री लाल चन्द कपूर एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसकी दिल्ली (शाहदारा) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाये।

[सं. फा. 5(33)/91-न्या.]

S.O. 1484.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Lal Chand Kapur, Advocate for appointment as a Notary to practise in Delhi, Shahdara Area.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(33)/91-Judl.]

का.आ. 1485.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री बशीर अहमद एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसकी नई दिल्ली (वसन्त विहार) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाये।

[सं. फा. 5(30)/91-न्या.]

S.O. 1485.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Bashir Ahmed, Advocate for appointment as a Notary to practise in Vasant Vihar Area, New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(30)/91-Judl.]

का.आ. 1486.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री के.पी. शर्मा एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसकी दिल्ली में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाये।

[सं. फा. 5(31)/91-न्या.]

S.O. 1486.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri K. C. Sharma, Advocate for appointment as a Notary to practise in Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(31)/91-Judl.]

का.आ. 1487.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री पी.जे. कोशी एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसकी पटियाला हाउस कोर्ट, नई दिल्ली में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाये।

[सं. फा. 5(32)/91-न्या.]

S.O. 1487.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri P. J. Koshy, Advocate for appointment as a Notary to practise in Patiala House Court, New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(32)/91-Judl.]

का.आ. 1488.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री राज किशोर जयराज जो उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिये दिया है कि उसकी बहराईब (यू.पी.) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाये।

[सं. फा. 5(27)/91-न्या.]

S.O. 1488.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Raj Kishore Jaiswal for appointment as a Notary to practise in Behraich, (UP).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(29)/91-Judl.]

का.आ. 1489.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री सुगन्ध जैन ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसको मुजफ्फरनगर (यू.पी.) में व्यवसाय के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. फा. 5(29)/91-न्या.]

S.O. 1489.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Sugandh Jain for appointment as a Notary to practise in Muzaffarnagar (UP).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(29)/91-Judl.]

का. आ. 1490.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री राम प्रसाद शर्मा ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसको मथुरा जिला (यू.पी.) में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(28)/91-न्या.]

S.O. 1490.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Ram Prasad Sharma for appointment as a Notary to practise in Mathura District (UP).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(28)/91-Judl.]

का.आ. 1491.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्रीमति कृष्णा भट्ट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसको यू.टी. आफ दिल्ली में व्यवसाय के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. 5(35)/91 न्या.]

S.O. 1491.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Mrs. Krishna Bhatt for appointment as a Notary to practise in U.T. of Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(35)/91-Judl.]

नई दिल्ली, 15 मई, 1991

का.आ. 1492.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री किशन चन्द सैनी ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया गया है कि उसको भोगल (जंगपुरा) नई दिल्ली में व्यवसाय करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. फा. 5(36)/91 न्या.]

New Delhi, the 15th May, 1991

S.O. 1492.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Kishan Chand Saini for appointment as a Notary to practise in Bhogal (Jangpura) New Delhi.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(36)/91-Judl.]

का.आ. 1493.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री कृपाल सिंह ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसकी तीस हजारी कर्टस व्यवसाय में करने के लिए नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आपेक्ष इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाए।

[सं. फा. 5(37)/91-न्या.]

पी.सी. कण्णन, सक्षम प्राधिकारी

S.O. 1493.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Kupal Singh for appointment as a Notary to practise in Tis Hazari Courts.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(37)/91-Judl.]

P. C. KANNAN, Competent Authority

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 17 मई, 1991

का.आ. 1494—केन्द्रीय सरकार विदेशी मुद्रा विनियमन अधिनियम, 1973 (1973 का 46) की धारा 3 के खंड (इ) के साथ पठित धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबन्धों को प्रवृत्त करने प्रयोजनार्थ श्री जे.एम. जैन को प्रवर्तन अधिकारी नियुक्त करती है, जिनका पदाभिधान विशेष प्रवर्तन निदेशक होगा और उक्त अधिनियम की धारा 50 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उन्हें नदधीन बनाए गए किसी नियम, निदेश या आदेश या उसके उपबन्धों में से किसी भी उपबन्ध (धारा 13, धारा 18 की उपधारा (1) के खंड (क) और धारा 19 की उपधारा (1) के खंड (क) से भिन्न) उल्लंघन के मामलों का अधिनियम करने के लिए सशक्त करती है।

[फा.सं. 174/2/91-तक.सम. (प्र.)]

आर.के. जिनदल निदेशक

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 17th May, 1991

S.O. 1494.—In exercise of the powers conferred by sub-section (1) of section 4, read with clause (a) of section 3 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), the Central Government hereby appoints Shri J. M. Jain to be an officer of Enforcement with the designation of Special Director of Enforcement, for the purpose of enforcing the provisions of the said Act; and in exercise of the powers conferred by section 50 of the said Act hereby empowers him to adjudicate cases of contravention of any of the provisions thereof [other than section 13, clause (a) of sub-section (1) of section 18 and clause (a) of sub-section (1) of section 19] or of any rule, direction or order made thereunder.

[F. No. 174/2/91-TC(E)]

R. K. JINDAL, Director

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 13 मई, 1991

का.आ. 1495—भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खण्ड (ग) के उपखण्ड (5) के अनुसरण में केन्द्रीय सरकार एनद्वारा श्री एन विश्वास, सचिव तथा महानिदेशक (तकनीकी विकास) उद्योग मंत्रालय, नई दिल्ली, को श्री एच.सी. गांधी के स्थापन पर भारतीय औद्योगिक विकास बैंक के निदेशक के रूप में नामित करती है।

[संख्या 7/2/90-बी.आ. -1]

एम.एस. सीतारामन, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 13th May, 1991

S.O. 1495.—In pursuance of sub-clause (v) of clause (c) of sub-section (1) of section 6 of the Industrial Development Bank of India Act, 1954 (18 of 1964), the Central Government hereby nominates Shri N. Biswas, Secretary and Director General (Technical Development), Ministry of Industry, New Delhi as a Director of the Industrial Development Bank of India vice Shri H. C. Gandhi.

[No. F. 7/2/90-BO.I]

M. S. SEETHARAMAN, Under Secy.

वाणिज्य मंत्रालय

नई दिल्ली, 13 मई, 1991

का.आ. 1496—केन्द्रीय सरकार निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स जे.बी. बोडा, सर्वेयर्स प्रा. लि. विजाग टिम्बर यार्ड परिसर, हारबार एप्रोच रोड, विशाखापत्तनम - 530 535 को भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 1270 तारीख 25 मार्च 1966 के उपबन्ध की अनुसूची में विनिर्दिष्ट अकार्बनिक रसायनों का विशाखापत्तनम में निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए इन शर्तों के अधीन अभिकरण के रूप में मान्यता देती है कि अभिकरण, अकार्बनिक रसायनों के निर्यात (निरीक्षण) नियम, 1966 के नियम 4 के उपनियम (4) के अंतर्गत इस संबंध में निर्यात निरीक्षण परिषद द्वारा नामित किसी भी अधिकारी को निरीक्षण प्रमाणपत्र जारी करने के लिए उक्त अभिकरण द्वारा अपनाई गई निरीक्षण प्रणाली की जांच करने के लिए पर्याप्त सुविधाएं देगा।

[फाइल सं. 5(15)/88-ई आई एंड ई पी]

MINISTRY OF COMMERCE

New Delhi, the 13th May, 1991

S.O. 1496.—In exercise of the power conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act 1963 (22 of the 1963), the Central Government here recognises for a period of three years with effect from the date of publication of this notification M/s. J. B. Boda Surveyors Pvt. Ltd., Vizag Timber Yard Premises, Harbour Approach Road, Vishakhapatnam as an agency for the inspection of the Inorganic Chemicals specified in schedule annexed to the notification of the Government of India, Ministry of Commerce No. S.O. 1270 dated 25th March, 1966 prior to export at Vizag subject to the condition that the said agency shall give adequate facilities to any officer nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by the said agency in standing, the certificate of inspection under sub-rule (4) of rule 4 of the Export of Inorganic Chemicals (Inspection) Rules, 1966.

[File No. 5/15/88-EI&amp;EP]

का आ. 1497:- केन्द्रीय सरकार, नियति (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स जे. बी. बोडा, सर्वेयर्स प्रा. लि. विजाग, टिम्बर यार्ड परिसर, हारबोर एप्रोच रोड, विशाखापत्तनम-530035 को यहाँ इसमें उपाबद्ध अनुसूची में विनिर्दिष्ट मैंगनीज तथा अयस्क ग्रुप-I व ग्रुप-II का विशाखापत्तनम में निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए इस शर्त के अधीन अभिकरण के रूप में मान्यता देती है कि अभिकरण मैंगनीज तथा अयस्क ग्रुप-I ग्रुप-II के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के उपनियम (4) के अन्तर्गत इस संबंध में निर्यात निरीक्षण परिषद् के किसी भी अधिकारी को निरीक्षण प्रमाण-पत्र जारी करने के लिए उक्त अभिकरण द्वारा अपनाई गई निरीक्षण प्रणाली की जांच करने के लिए पर्याप्त सुविधाएँ देगा।

#### अनुसूची

##### I. खनिज तथा अयस्क ग्रुप-I

1. मैंगनीज अयस्क, मैंगनीज डायक्साइड सहित
2. आयरन अयस्क,
3. बाक्साइट, कैलसिड बाक्साइट सहित,
4. फ़ैरोमैंगनीज स्लेम सहित,

##### II. खनिज तथा अयस्क ग्रुप-II

1. मैंगनीज डायक्साइड,
2. क्रोम अयस्क, क्रोम ब्लांक सहित,
3. कायनाइट,
4. सिलिमनाइट,
5. संकेद्रित जिंक सहित कच्चा जिंक,
6. परिवर्ध और निस्तप्त मैंगनेसाइट सहित मैंगनेसाइट,
7. बैराइट्स,
8. लाल आक्साइड,
9. पीला गैरिक,
10. सेलखंडी,
11. स्पीट (फ़ैल्डस्पार)

[फाइल सं. 5(15)/88-ईआईएण्ड ई पी]

S.O. 1497.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of three year with effect from the date of publication of this notification M/s. J. B. Boda Surveyors Pvt. Ltd., Vizag, Timber Yard Premises, Harbour Approach Road, Vishakhapatnam as an agency for the inspection of the Minerals & Ores Group-I and Group-II specified in the schedule annexed hereto prior to export at Vizag subject to the condition that the said agency shall give adequate facilities to any officer nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by the said agency in granting the certificate under Sub-Rule (4) of Rule 4 of the

Export of Minerals and Ores Group-I and Group-II (Inspection) Rule, 1965.

#### SCHEDULE

##### I. Minerals & Ores (Group-I)

1. Manganese Ore, excluding manganese dioxide.
2. Iron Ore.
3. Bauxite, including calcined bauxite.
4. Ferromanganese including ferromanganese slag.

##### II. Minerals & Ores (Group-II)

1. Manganese Dioxide.
2. Chrome Ore, including Chrome concentrates.
3. Kyanite.
4. Sillimanite.
5. Zinc Ores including zinc concentrates.
6. Magnesite, including dead-burnt and calcined magnesite.
7. Barytes.
8. Red oxide.
9. Yellow Ochre.
10. Steatite.
11. Feldspar.

[F. No. 5/15/88-EI&EP]

का.आ. 1498:- केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स इन्स्पेक्शन सर्वे एण्ड सर्विलेंस (इंडिया) प्राइवेट लिमिटेड, 26/37, ऐरावाली चेट्टी स्ट्रीट मद्रास-600001 को इससे उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज तथा अयस्क (ग्रुप-I तथा-II) का निर्यात अनुसूची-I तथा अनुसूची-II में इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए इन शर्तों के अधीन अभिकरण के रूप में मान्यता देती है और अभिकरण खनिज तथा अयस्क ग्रुप-I तथा-II के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के उपनियम (4) के अन्तर्गत निर्यात निरीक्षण परिषद्/अभिकरण द्वारा अपनाई गई निरीक्षण पद्धति की जांच करने के लिए इस संबंध में मद्रास में नामित किसी भी अधिकारी को निरीक्षण प्रमाण पत्र जारी करने के लिए पर्याप्त सुविधाएँ देगा।

#### अनुसूची-I

1. मैंगनीज डायक्साइड सहित मैंगनीज अयस्क
2. कच्चा लोहा
3. फ़ैरोमैंगनीज के धातुमल सहित, फ़ैरोमैंगनीज
4. निस्तप्त बाक्साइट सहित बाक्साइट

#### अनुसूची-II

1. मैंगनीज डायक्साइड
2. क्रोम संकेद्रित सहित कच्चा क्रोम
3. कायनाइट
4. सिलिमनाइट
5. जिंक संकेद्रित सहित कच्चा जिंक

6. निस्तुत तथा परिदग्ध मैंगनेसाईट सहित मैंगनेसाईट
7. बैरार्डिट्स
8. लाल आक्साईड
9. पीला गैरीक
10. सेलब्रडी
11. स्पतीय (फैल्डस्पार)

[फाइल सं. 5(1)88-ईआई एण्ड ईपी]

S.O. 1498.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of three years from the date of publication of this notification M/s. Inspection Survey and Surveilled (India) Pvt. Ltd., 26/27, Erabalu Chetty Street Madras-600001 as an agency for inspection of Minerals and Ores (Group-I and II) as specified in Schedule I and Schedule-II annexed hereto prior to export at Madras subject to the condition that the said agency shall give adequate facilities to any officer nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by the said agency in granting the certificate of inspection under sub-rule (4) of the Export of Minerals and Ores Group-I and Group-II (Inspection) Rules, 1963.

#### SCHEDULE-I

01. Manganese Ores, excluding manganese dioxide.
02. Iron Ore.
03. Ferromanganese, including ferromanganese slag.
04. Bauxite, including calcined bauxite.

#### SCHEDULE-II

01. Manganese Dioxide.
02. Chrome Ore, including chrome concentrates.
03. Kyanite.
04. Sillimanite.
05. Zinc Ores, including zinc concentrates.
06. Magnesite, including dead-burnt and calcined magnesite.
07. Barytes.
08. Red Oxide.
09. Yellow Ochre.
10. Steatite.
11. Feldspar.

[File No. 5(1)/88-EI&EP]

का.ग्रा. 1499:—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मोटर इंडस्ट्रीज कम्पनी लिमिटेड, होमूर रोड, अदुगोदी, बंगलूर-560030 में विनिर्मित ऑटोमोबाइल के पुर्जों और संघटकों का निर्यात से पूर्व निरीक्षण करने के लिए मैसर्स मोटर इंडस्ट्रीज कम्पनी लिमिटेड, को, जिनका रजिस्ट्रीकृत कार्यालय होमूर रोड, अदुगोदी, बंगलूर-560030 में है, 16 मई, 1991 से तीन और वर्षों की अवधि के लिए का.ग्रा. 1478 तारीख 16 मई, 1991 में अधिसूचित शर्तों के अधीन रहते हुए, अभिकरण के रूप में मान्यता देती है।

[फाइल सं. 5(3)/88-ई आई एण्ड ईपी]

S.O. 1499.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a further period of three years with effect from 16th May, 1991 M/s. Motor Industries Company Limited, having their registered office at Hosur Road, Adugodi, Bangalore-560032, as the agency, for inspection of diesel engine spares and components, manufactured at M/s. Motor Industries Company Limited, Hosur Road, Adugodi, Bangalore-560030, prior to export, subject to the conditions notified vide S.O. 1478 dated 16th May, 1991.

[F. No. 5(3)/88-EI&EP]

का.ग्रा. 1500:—निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप धारा 7 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, मैसर्स बजाज ऑटो लिमिटेड, बजाज नगर, बालुज, औरंगाबाद-431133 में दुपहिया या तिपहिया स्कूटरों के लिए विनिर्मित ऑटोमोबाइल के पुर्जों संघटकों तथा उपसाधनों का निर्यात से पूर्व निरीक्षण करने के लिए मैसर्स बजाज ऑटो लिमिटेड, को जिनका रजिस्ट्रीकृत कार्यालय, अकुरुदी, पुणे-411035 में है इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्षों की अवधि के लिए निम्नलिखित शर्तों के अधीन रहते हुए, अभिकरण के रूप में मान्यता देती है, अर्थात् :—

1. कि मैसर्स बजाज ऑटो लिमिटेड, बजाज नगर, बालुज औरंगाबाद-431133 में दुपहिया या तिपहिया स्कूटरों के लिए विनिर्मित उपबंध-I और II में दिए गए ऑटोमोबाइल के पुर्जों, संघटकों और उपसाधनों का मैसर्स बजाज ऑटो लिमिटेड, निर्यात से पूर्व निरीक्षण करेंगे और वह ऐसे अधिकारी के तकनीकी नियंत्रण में किया जाएगा जिसका पद निर्यात निरीक्षण अभिकरण बम्बई के अपर निदेशक से कम न हो और इस प्रयोजन के लिए मैसर्स बजाज ऑटो लिमिटेड अपनी यूनिट मैसर्स बजाज ऑटो लिमिटेड, बजाज नगर, बालुज, औरंगाबाद-431133 से निर्यात की गई वस्तुओं की पोत पर्यन्त निःशुल्क (फ्री ऑन बोर्ड) मूल्य के 0.1% की दर से राशि निर्यात निरीक्षण अभिकरण बम्बई को देगी जो एक वर्ष में कम से कम दो हजार पांच सौ रुपए और अधिक से अधिक एक लाख रुपए होगी।

2. मैसर्स बजाज ऑटो लिमिटेड इस अधिसूचना के अधीन अपने कर्तव्यों के पालन में ऐसे निर्देशों द्वारा आबद्ध होगी जो निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) समय-समय पर लिखित रूप में दें।

स्पष्टीकरण:— इस अधिसूचना के प्रयोजन के लिए "ऑटोमोबाइल के पुर्जों संघटकों तथा उप साधनों" से ऑटोमोबाइल और ट्रेलरों में जाहे वे घात के संलग्न हो या न हो। प्रामाणिकता उत्पाद है जिसमें वे उत्पाद भी सम्मिलित है जो इस अधिसूचना के उपबंध-I और II में दिए गए मूल उत्पाद के प्रतिस्थापन पुर्जों के रूप में प्रयुक्त किए जाते हैं।

उपाध्याय-I

1. पिस्टन पिन

2. श्रन्तः दहन इंजिनों के लिए श्रन्तगंत और विस्तारक वाल्व
3. नट और बोल्ट सहित संयोजक इत्यादि
4. पम्प इंजन श्रन्तः क्षेपण के लिए एकहरे मिलेंडर
5. ऑटो मोबाइल विद्युत हार्न (कम्पन प्रकार के और वायु तीन प्रकार के)
6. प्रज्वलन कुण्डली
7. स्टार्टर मोटर और इसके आर्मचर (केवल 24 वोल्ट डी सी तक)
8. स्पोर्टिंग प्लग
9. ऑटो मोबाइल डायनामों, इसके आर्मचर और फिल्ट कोइल ।
10. हैड लाईट समुच्चय (बल्ब सहित तथा रहित)
11. ऑटोमोबाइल लैम्प (बल्ब)
12. धुरी शाफ्ट
13. ऑटोमोटिव ब्रेक श्रस्तरण
14. ब्रेक ड्रम
15. किंग पिन
16. पस्ती कमानी और इसकी पन्थियां
17. शैकल पिन
18. ऑटो मोबाइल सस्पेंशन के लिए कुण्डलिनी कमानी
19. ऐमीटर
20. ऑटो मोटिव हाइड्रोलिक प्रधात अवशोषक
21. ब्लेडों सहित पाइपर समुच्चय तथा इसकी कमानी ।

## उदाहरण-II

1. पिस्टन, पिस्टन रिंग, सरविलय
2. ब्रेक शाफ्ट
3. कैम शाफ्ट
4. संयोजक भुजा
5. वाल्व स्प्रिंग, वाल्व गाईड, वाल्व लॉकिंग पिन, वाल्व सीट, वाल्व पुण रोड,
6. सिलेंडर हैड, सिलेंडर क्लाक
7. सिलेंडर के लिए लाइनर
8. क्लच समुच्चय, क्लच दाब पोट, क्लच फ्रैमिंग क्लच डिस्क, क्लच स्प्रिंग, क्लच लीवर,
9. नोजल, ऑटोपोइजर, ऐंलीमेंट, फिल्टर, पम्प ऐंलीमेंट, चूषण वाल्व, डिलीवरी वाल्व, गवर्नर डायफ्राम, हस्तचालित पम्प डायफ्राम और डिबरी पम्प ईश्रन्त श्रन्त क्षेपण के लिए निम्नल नटों सहित पाइप ।
10. वायु फिल्टर समुच्चय और इसके फिल्टर एलिमेंट
11. ईंधन पम्प, स्नेहक तेल पम्प, तेल फिल्टर समुच्चय ईंधन फिल्टर समुच्चय और इसके पुर्जें ।
12. जल पम्प और इसके पुर्जें
13. स्पीडो मीटर तेल दाब गंत, ईंधन गेज, थर्मो मीटर
14. स्पीडो मीटर के लिए केबोल, क्लच और ब्रेक

15. ब्रेक समुच्चय, मास्टर सिलेंडर, पहिया सिलेंडर उन पुर्जें और सुधार किट :
16. कार्बरेटर समुच्चय तथा इसके संघटक
17. रेडियटर तथा इसके कोर
18. बिन्दक और उसके पुर्जें
19. स्टार्टर मोटर और वायनामों के लिए कार्बन ब्रश और स्प्रिंग
20. हार्न रिले, हार्न डायफ्राम तथा हार्न संयोजक
21. फ्लेशर यन्त्र
22. बोल्टता निधामक
23. नोदक शाफ्ट
24. सर्वाधिष जोड और इसके भाग
25. संचरण जंजीरें
26. ह्व
27. अग्र और पश्च स्प्रिंगों के लिए हेंगर ब्रेकिट, रीकल
28. प्रधात, अवशोषक योग
29. ब्रेक वूस्टर के लिए चमड़े का वाणर, स्प्रिंग पैकिंग और संयोजक तथा सिलेंडर सुधार किट
30. वूस्टर संपीडक प्रकार हेतु पिस्टन, पिस्टन रिंग वाल्व फलेट और चूषण वाल्व कैम
31. अग्र धुरी को बांधने हेतु सिरे, ड्रेम सिरे, किंग पिन सुधार किट
32. रिम का पहिया और प्लेट समुच्चय
33. अवरोधी नियंत्रक और उपरोधी नियंत्रक ट्यूब
34. दरवाजे के ताले
35. उत्पादन अंक
36. प्रीस निम्नल
37. सभी प्रकार के गैस्केट
38. सभी प्रकार के तैल सील
39. सभी प्रकार के वीयरिंग
40. सभी प्रकार के गियर
41. सभी प्रकार के शावु और रबर ब्रुशिंग
42. सभी प्रकार के कालक अर्थात् बोल्ट, स्टूड, गैज डिबरी और वाणर ।

[फाइल नं. 5/3/91-ई.आई.एण्ड ई. पी.]

S.O. 1500.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises M/s. Bajaj Auto Ltd., having their registered office at Akurdi, Pune-411035, as the Agency for a period of three years from the date of publication of this notification in the official gazette, for inspection of Automobile Spares, Components and Accessories for 2/3 wheeler scooters manufactured at M/s. Bajaj Auto Ltd., Bajaj Nagar, Waluj, Aurangabad-431133 prior to export subject to the following conditions, namely :—

1. That M/s. Bajaj Auto Ltd., shall carryout the inspection of automobile spares, components and ac-

cessories as per annexure-I & II for 2/3 wheeler scooters manufactured at M/s. Bajaj Auto Ltd., Bajaj Nagar, Waluj, Aurangabad-431133 prior to export under the technical control (if an officer not below the rank of Additional Director of the export Inspection Agency-Bombay and for this purpose M/s. Bajaj Auto Ltd., shall pay to the Export Inspection Agency-Bombay an amount at the rate of 0.1 per cent of the f.o.b. (free on board) value of the items exported from their unit at M/s. Bajaj Auto Ltd., Bajaj Nagar, Waluj, Aurangabad-431133 subject to a minimum of rupee two thousand five hundred and maximum of rupees one lakh in a year.

2. M/s. Bajaj Auto Ltd., in the performance of its functions under the notification shall be bound by such directions as the Director (Inspection and Quality Control) may give to it in writing from time to time.

Explanation.—For the purpose of this Notification 'Automobile Spares, Components & Accessories' mean the manufactured products used in automobile and trailers (whether attached to the vehicle or not) including that used as a replacement part for the original product given in Annexure-I & II to this Notification.

#### ANNEXURE-I

1. Piston pin.
2. Inlet and exhaust valves for internal combustion engines.
3. Connecting rod including its nuts and bolts.
4. Single cylinder fuel injection pump.
5. Automobile electric horn (vibrating type and wind type).
6. Ignition coil.
7. Starter motor and its armature (Upto 24 volts DC only).
8. Sparking plug.
9. Automobile lamp (bulb).
10. Automobile dynamo, its armature and field coils.
11. Head Light Assembly (with or without bulb).
12. Axle shaft.
13. Automotive brake lining.
14. Brake drum.
15. King pin.
16. Leaf Spring and its leaves.
17. Shackle pin.
18. Ammeter.
19. Automobile Hydraulic shock absorber.
20. Helical spring for automobile suspension.
21. Wiper assembly including its arm and blade.

#### ANNEXURE-II

1. Piston, Piston rings, Circlips.
2. Crankshaft.
3. Camshaft.
4. Rocker arm.
5. Valve springs, valve guides, valve locking pins, valve seat, valve push rod.
6. Cylinder head, Cylinder block.
7. Liners for cylinders.
8. Clutch assembly, clutch pressure plate, clutch facing, clutch disc, Clutch spring, Clutch levers.
9. Nozzels, Automizer, Filter elements, Pump elements, Suction valve, Delivery valve, Governor diaphragm,

hand priming pump diaphragm and pipes with nuts, nipples for fuel injection pumps.

10. Fuel pump, lubricating oil pump, Oil filter assembly, Fuel filter assembly and their parts.
11. Air Filter assembly and its filter elements.
12. Water pump including its parts.
13. Speedometer, Oil pressure gauge, Fuel gauge, Thermometers.
14. Cables for speedometer, clutch and brake.
15. Brake assembly, Master cylinder, wheel cylinder, their parts and repair kits, Brake springs.
16. Carburettor assembly and its components.
17. Radiator and its core.
18. Distributor and its parts.
19. Carbon brushes and springs for starter motor and Dynamo.
20. Horn relay, Horn diaphragm and Horn contact.
21. Flasher units.
22. Voltage regulator.
23. Propeller shaft.
24. Universal joint and its parts.
25. Transmission chains.
26. Hubs.
27. Hanger Brackets, Shackles for front and rear springs.
28. Shock absorber link.
29. Leather washer, Spring, Packing & Connections and Cylinder repair kit for Brake Booster.
30. Piston, Piston rings, Valve disc and Section valve Cap for Booster compressor type.
31. Front axle tie rod ends, Drag Link ends, King pin repair kit.
32. Wheel rim and disc assembly.
33. Throttle control and Throttle control tube.
34. Door locks.
35. Lifting jacks.
36. Grease nipple.
37. All types of gaskets.
38. All types of oil seals.
39. All types of bearings.
40. All type of gears.
41. All types of metal and rubber bushings.
42. All type of fasteners i.e. bolts, studs, screws, nuts and washers.

[File No. 5/3/91-EI&EP]

नई दिल्ली, 16 मई, 1991

का. ग्रा. 1501—केन्द्रीय सरकार, निर्यात (स्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप धारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, मैसर्स सुन्दरम ऐबेक्स लिमिटेड, पैडी, मद्रास-600050 में विनिर्मित आटोमोबाईल के पुर्जे, संघटक तथा उपसाधनों अर्थात् ब्रेक लाईनिंग तथा क्लच फेसिंग का निर्यात में पूर्व निरीक्षण करने के लिए मैसर्स सुन्दरम ऐबेक्स लिमिटेड, को जिनका रजिस्ट्रीकृत कार्यालय, 180 माउंट रोड, मद्रास 600006, में है, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए,



निम्नलिखित शर्तों के अधीन रहते हुए, अभिकरण के रूप में मान्यता देती है, अर्थात् :—

1. मैसर्स सुन्दरम ऐबेक्स लिमिटेड, पैडी, मद्रास-600050 में विनिर्मित ब्रेक लाईनिंग तथा क्लच फैसिंग का निर्यात से पूर्व मैसर्स सुन्दरम ऐबेक्स लिमिटेड, निरीक्षण करेगी और यह ऐसे अधिकारी के तकनीकी नियंत्रण में किया जाएगा जिसका पद निर्यात निरीक्षण अभिकरण मद्रास के अपर निदेशक से कम न हो और इस प्रयोजन के लिए मैसर्स सुन्दरम ऐबेक्स लिमिटेड, अनिर्यात की गई मर्चों के पोत पर्यन्त निशुल्क (एफ. ओ. बी.) मूल्य के 0.1% की दर से राशि निर्यात निरीक्षण अभिकरण मद्रास को देगी जो एक वर्ष में कम से कम दो हजार पांच सौ रुपये और अधिक से अधिक एक लाख रुपये होगी।

2. मैसर्स सुन्दरम ऐबेक्स लिमिटेड इस अधिसूचना के अधीन अपने कार्यों के पालन में ऐसे निर्देशों द्वारा आबद्ध होगी जो निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) समय-समय पर निम्नलिखित रूप में दे सकते हैं।

स्पष्टीकरण:—इस अधिसूचना के प्रयोजन के लिए 'आटोमोबाईल के पुर्जों, संघटकों तथा उपसाधनों में आटोमोबाईल और ट्रेलरों में (चाहे वह यान में संलग्न हों या न हों) प्रयुक्त विनिर्मित उत्पाद है जिसमें वे उत्पाद भी सम्मिलित हैं जो इन मूल उत्पादों अर्थात् ब्रेक लाईनिंग तथा क्लच फैसिंग के प्रतिस्थापन पुर्जों के रूप में प्रयुक्त किए जाते हैं।

[फाईल सं. 5/2/91 - ई आई एण्ड ई पी]

New Delhi, the 16th May, 1991

S.O. 1501.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises M/s. Sundaram-Abex Limited having their registered office at 180, Mount Road, Madras-600006, as the Agency for a period of three years from the date of publication of this notification in the Official Gazette for inspection of Automobile Spares Components and Accessories viz Brake Linings and Clutch Facings manufactured at M/s. Sunandam-Abex Limited, Padi, Madras-600050 prior to export subject to the following conditions, namely :—

1. That M/s. Sundaram-Abex Limited, shall carry out the inspection of Brake Linings and Clutch Facings manufactured at M/s. Sundaram-Abex Limited, Padi, Madras-600050 prior to export under the technical control of an officer not below the rank of Additional Director of the Export Inspection Agency-Madras and for this purpose M/s. Sundaram-Abex Limited, shall pay to the Export Inspection Agency-Madras an amount at the rate of 0.1 percent of the F.O.B. (free on board) value of the items exported from their unit at M/s. Sundaram-Abex Limited, Padi, Madras-600050 subject to a minimum of rupees two thousand five hundred and maximum of rupees One lakh in a year.

2. That M/s. Sundaram-Abex Limited, in the performance of its functions under this notification shall be bound by such directions as the Director (Inspection and Quality Control) may give it in writing from time to time.

1358 GI/91—2.

#### Explanation :

For the purpose of this notification Automobile Spares, Components and Accessories shall mean the manufactured products used in automobiles and trailers (whether attached to the vehicle or not) including that used as a replacement part to the original product viz Brake Lining and Clutch Facing.

[File No. 5/2/91-EI&EP]

का. आ 1502—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स जिग्रो कैम लैबोरेटरीज (प्राइवेट) लिमिटेड मथरू कुरपा, गणेश कालोनी, एस एन. पेट, बैलारी 583101, को इससे उपाबद्ध अनुसूची में विनिर्दिष्ट ऐथिल एल्कोहल (रेक्टीफाईड स्प्रिट) श्रेणी-II के निर्यात से पूर्व निरीक्षण करने के लिए इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए इन शर्तों के अधीन अभिकरण के रूप में मान्यता देती है कि संगठन कार्बनिक रसायनों के निर्यात (निरीक्षण) नियम, 1966 के नियम 4 के उप नियम (4) के अन्तर्गत निर्यात निरीक्षण परिपद के किसी भी अधिकारी को निरीक्षण प्रमाण-पत्र जारी करने के लिए अभिकरण द्वारा अपनाई गई निरीक्षण प्रणाली की जांच करने के लिए पर्याप्त सुविधाएं देगी।

#### अनुसूची

1. ऐथिल एल्कोहल (रेक्टीफाईड स्प्रिट श्रेणी-II)

[फाईल सं 5 (4)/90 ई आई एण्ड ई पी]

S.O. 1502.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of three years with effect from the date of publication of this notification M/s. Geo Chem Laboratories (Pvt.) Limited, Mathura Krupa Ganesh Colony, S.N. Pet, Bellary-583101 as an agency for the inspection of Ethyl Alcohol (Rectified Spirit-Grade II) specified in the schedule annexed hereto prior to export subject to condition that the said agency shall give adequate facilities to any officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by the said agency in granting the certificate of inspection under sub-rule (4) of rule 4 of the Export of Organic Chemicals (Inspection) Rules, 1966.

#### SCHEDULE

1. Ethyl Alcohol (Rectified Spirit-Grade-II)

[F. No. 5(4)/80-EI&EP]

का. आ 1503—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स जिग्रो कैम लैबोरेटरीज प्राइवेट लि., 240, थम्बु चेंडी स्ट्रीट, मद्रास-600001 को यहां इससे उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज तथा ग्रयस्क (ग्रुप-I व ग्रुप-II) का निर्यात से पूर्व निरीक्षण के लिए इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए इन शर्तों के अधीन अभिकरण के रूप में मान्यता देती है कि उक्त अभिकरण खनिज तथा ग्रयस्क ग्रुप-I व ग्रुप-II के निर्यात (निरीक्षण) नियम, 1965 के नियम-4 के उपनियम (4)

के अन्तर्गत उक्त निरीक्षण प्रमाण-पत्र देने के लिए अधिकरण द्वारा अपनाई गई निरीक्षण पद्धति की जांच करने के संबंध में निर्यात निरीक्षण परिपद द्वारा मनोनीत किमी भी अधिकारी को पर्याप्त सुविधाएं देगा।

### अनुसूची

#### 1. खनिज तथा अयस्क (ग्रुप-I)

1. मैगनीज डायक्साइड रहित कच्चा मैगनीज,
2. कच्चा लोहा,
3. फेरोमैगनीज स्लेग सहित, फेरोमैगनीज,
4. कैल्शियम बोक्साइड सहित बोक्साइड।

#### 2. खनिज तथा अयस्क (ग्रुप-II)

1. मैगनीज डायक्साइड,
2. क्रोम अयस्क, क्रोम चूर्ण सहित,
3. कायनाइट,
4. सिलिमनाइट,
5. संकेद्रित जिंक सहित कच्चा जिंक,
6. परिदग्ध और निस्तप्त मैगनेसाइट सहित मैगनेसाइट,
7. बैराइट्स,
8. लाल आक्साइड
9. पीला गैरिक,
10. सेलखंडी,
11. स्पतीय (फैल्डस्पार)

[फाइल सं. 5/4/91 ई आई एण्ड ई पी]

ऐ. के. चौधुरी, निदेशक

S.O. 1503.—In exercise of the powers conferred by sub-section (i) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises for a period of three years from the date of publication of this notification M/s. Geo-Chem Laboratories Pvt. Ltd., 240, Thambu Chetty Street, Madras-600001 as an agency for the inspection of Minerals and Ores (Group-I and Group-II) specified in the schedule annexed hereto prior to export subject to the condition that the said agency shall give adequate facilities to any officer nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by the said agency in granting the certificate of inspection under sub-rule (4) of Rule 4 of the Export of Minerals and Ores Group-I and Group-II (Inspection) Rule, 1965.

### SCHEDULE

#### I. Minerals and Ores (Group-I)

1. Manganese Ore, excluding manganese dioxide.
2. Iron Ore.
3. Ferromanganese including ferromanganese slag.
4. Bauxite, including calcined bauxite.

#### II. Minerals and Ores (Group-II)

1. Manganese Dioxide.
2. Chrome Ore, including Chrome concentrates.
3. Kyanite.
4. Sillimanite.
5. Zinc Ores, including zinc concentrates.

6. Magnesite, including dead-burnt and calcined magnesite.
7. Barytes.
8. Red oxide.
9. Yellow ochre.
10. Steatite.
11. Feldspar.

[F. No. 5/4/91-EI&EP]

A. K. CHAUDHURI, Director

(मुख्य नियंत्रक, आयात-निर्यात का कार्यालय)  
आदेश

नई दिल्ली, 13 मई, 1991

का. आ. 1504—मैसर्स इन्टेक्स कम्प्यूटर्स प्राईवेट लिमिटेड, बम्बई को कम्प्यूटर सिस्टम के संघटकों के आयात के लिए रु. 10,36,950/- (केवल रूप, दस लाख छत्तीस हजार नौ सौ पचास) के मूल्य का आयात लाईसेंस संख्या पी/एस/2018276 दिनांक 7-8-89 दिया गया था।

फर्म ने उपर उल्लिखित लाईसेंस की सीमाशुल्क और मुद्रा नियंत्रण प्रयोजन प्रति की अनुलिपि प्रति जारी करने का इस आधार पर अनुरोध किया है कि लाईसेंस की सीमाशुल्क और मुद्रा नियंत्रण की मूल प्रति गुम अथवा खो गई है। आगे यह भी बताया गया है कि लाईसेंस की सीमाशुल्क प्रयोजन और मुद्रा नियंत्रण प्रति किसी सीमाशुल्क प्राधिकारी के पास पंजीकृत नहीं थी और इस प्रकार सीमाशुल्क प्रति के मूल्य को बिल्कुल भी उपयोग में नहीं लाया गया है।

2. अपनी दलील के समर्थन में लाईसेंसधारी ने नोटरी पब्लिक बम्बई के समक्ष विधिवत रूप में स्टाम्प पेपर पर शपथ लेकर हलफनामा दायर किया है। मैं तदनुसार इस बात में सन्तुष्ट हूँ कि आयात लाईसेंस संख्या पी/एस/2018276 दिनांक 7-8-89 की मूल सीमाशुल्क प्रयोजन और मुद्रा नियंत्रण प्रति गुम अथवा खो गई है। यथासंशोधित आयात (नियंत्रण) आदेश 1955 दिनांक 7-12-1955 के उप खण्ड 9(घ) के अन्तर्गत प्रदत्त अधिकारों का प्रयोग करते हुए मैसर्स इन्टेक्स कम्प्यूटर्स प्राईवेट लिमिटेड डी-217 अन्सा इन्डस्ट्रियल एस्टेट साकी, बिहार रोड, बम्बई को जारी उक्त मूल सीमाशुल्क प्रयोजन और मुद्रा नियंत्रण प्रति संख्या पी/एस/2018276 दिनांक 7-8-89 को एनडवाग रद्द किया जाता है।

3. उक्त लाईसेंस की सीमाशुल्क प्रयोजन और मुद्रा नियंत्रण प्रति की अनुलिपि प्रति पार्टी को मूल्य से जारी की जा रही है।

[संख्या सुप्ल/एन एस 2/493/एस एस आई/ए. एस 90/  
एस. एल. एस. /236]

अनिता पठेजा, उप मुख्य नियंत्रक, आयात निर्यात

(Office of the Chief Controller of Imports and Exports)  
ORDER

New Delhi, the 13th May, 1991

S.O. 1504.—M/s. Intex Computers Pvt. Ltd., Bombay were granted an import licence No. P/S/2018276 dated 7-8-89, for Rs. 10,36,950 Rupees, ten Lakhs Thirty Six Thousand Nine Hundred and Fifty only, for import of components for computers systems, from G.C.A.

The firm has applied for issue of duplicate copy of Customs and Exchange Control purposes copy of the above mentioned licence on the ground that the original Customs purposes and Exchange Control copy of the licence have been lost or misplaced. It has further been stated that the Customs purposes and Exchange Control copy of the licence was not registered with any Customs Authority and as such the value of Customs purpose copy has not been utilised at all.

2. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn in before a Notary public Bombay. I am accordingly satisfied that the original Customs purposes and Exchange Control copy of import licence No. PS/2018276, dated 7-8-89, have been lost or misplaced by the firm. In exercise of the powers conferred under sub-clause 9(d) of the Import (Control) Order, 1955 dated 7-12-1955, as amended the said original Customs purposes and Exchange Control copy No. P/S/201276 dated 7-8-89, issued to M/s. Intex Computers Pvt. Ltd. D-217, Ansa Industrial Estate, Saki Vihar Road, Bombay, is hereby cancelled.

3. A duplicate Customs purposes and Exchange Control copy of the said licence are being issued to the party separately.

[No. Suppl/NS. /493/SSI/AM-90/SLS/236]

ANITA PATHEJA, Dy. Chief Controller of  
Imports and Exports

नागर विमानन मंत्रालय

नई दिल्ली, 14 मई, 1991

का. आ. 1505—राष्ट्रीय विमानपत्तन प्राधिकरण अधिनियम 1985 (1985 का 64) की धारा 5 और धारा 7 के उप खंड (1) के साथ पठित धारा 3 के उप-खंड 3 (ग) में निहित शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा 21 सितम्बर 1990 से वर्तमान नियमों और शर्तों पर 31 जुलाई 1991 तक की अवधि के लिए अनुसूची "ख" के 8500-200-9500 रुपये के वेतनमान में (संशोधित) राष्ट्रीय विमानपत्तन प्राधिकरण में एयर कर्मीडोर एम. एन. अमृतलिंगम को पूर्ण कालिक सदस्य (इंजीनियरिंग व योजना) के रूप में पुनः नियुक्त करली है।

[फाईल संख्या एवी-11015/2/90 एन ए ए (बी बी) भाग]

ए. एम. भारद्वाज, संयुक्त सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 14th May, 1991

S.O. 1505.—In exercise of the powers conferred by sub-section 3 (c) of Section (3) read with sub-section (i) of Section 5 and Section 7 of the National Airports Authority Act, 1985 (64 of 1985), the Central Government hereby reappoints Air Cmde M. N. Amrithalingam as whole-time

Member (Engineering and Planning) in the National Airport Authority in Schedule 'B' scale of pay of Rs. 8500-200-9500 (Revised) for a period upto 31st July, 1991 on the existing terms and conditions with effect from the 21st September, 1990.

[F. No. AV-11015/2 '90-NAA (VB)/Pt]

A. M. BHARDWAJ, Jt. Secy.

श्रम मंत्रालय

नई दिल्ली, 3 मई, 1991

का. आ. 1506—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुनुस्तोरिया एरिया आफ मै. ई. सी. एल. के प्रबन्धन से संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-91 को प्राप्त हुआ था।

MINISTRY OF LABOUR

New Delhi, the 3rd May, 1991

S.O. 1506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kunustoria Area of M/s. E.C.L. and their workmen, which was received by the Central Government on 2-5-1991.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL ASANSOL

Reference No. 23/89

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the management of Kunustoria  
Area of M/s. Eastern Coalfields Ltd.

AND

Their Workmen.

APPEARANCES :

For the Employers—Shri P. K. Das, Advocate.

For the Workmen—Shri C. S. Mukherjee, Advocate.

INDUSTRY : Coal STATE : West Bengal

Dated, the 23rd April, 1991

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication, vide Ministry's Order No. L-22012(213)/88-D.IV (B) dated the 5th June, 1989.

SCHEDULE

"Whether the action of the General Manager, Kunustoria Area of E.C. Ltd., P.O. Toposi, Dist. Burdwan in denying one increment since 1979 as per NCWA-

II to the Statistical Clerks of that Area is justified? If not, to what relief the workmen concerned are entitled?"

2. The case of the union in brief is that the present dispute has been raised on behalf of the Statistical Clerks of Kunustoria Area under Eastern Coalfields Ltd. The aggrieved workmen are the Statistical Clerks of that area. The genesis of the dispute dates back to 1-1-79 when the pay of the Statistical Clerks was fixed in terms of the provisions of NCWA-II. From 1-1-79 the basic pay of the Statistical Clerks of Kunustoria Area was fixed at Rs. 1062, but the pay of the Statistical Clerks of other Areas namely Kenda Area and other areas was fixed at Rs. 1107. The patent discriminating treatment towards the staff of the Kunustoria Area was brought to the notice of the authority at number of times but to no effect. The attempts to resolve the dispute at bipartite level failed. Then there was an attempt for conciliation. The same also failed. The matter was sent to the Ministry of Labour, Government of India and ultimately the Ministry of Labour has referred the dispute to this Tribunal for adjudication.

3. The management has filed written statement contending inter-alia that it is not true that the Statistical Clerks of Kunustoria Area has been denied one increment at the time of fixation of their pay from 1-1-79 under the provisions of NCWA-II. It is not true that the Statistical Clerks of Kunustoria Area has been drawing one increment less than the Statistical Clerks of other areas. According to the management there is no anomaly in pay fixation of the concerned workmen. The management has denied other material averments of the statement filed by the union.

4. It is admitted that the present dispute has been raised on behalf of the Statistical Clerks of Kunustoria Area and their pay as fixed w.e.f. 1-1-79 under the provisions of National Coal Wage Agreement-II. The management has filed a document Ext. M-4 to show how the pay of the Statistical Clerks of Kunustoria Area has been fixed according to the terms of National Coal Wage Agreement-II. The said document reads as follows :

"Eastern Coalfields Limited

(A Subsidiary of C.I. Ltd.)

Office of the General Manager,

Kunustoria Area, P.O. Toposi.

Ref. No. A-KNT/P&IR/23 (G)/10523 Dated 16/18-11-85  
To,

The Personnel Manager (IR),

ECL, HQ. Sanctoria.

Sub :—Pay fixation of Statistical Clerks of Kunustoria.

Area.

Dear Sir,

With reference to your letter No. ECL/CMD/C-6-E/17/6295 dated 7-11-85, I am hereby giving information as desired by you.

Please acknowledge it and do the needful. The details are as follows :—

Name of Statistical Clerk	Previous Basic & Grade	Promotion in Gr. I during 1977 with their Basic	Basic as on 31-12-78	Basic as on 1-1-79	Present Basic
1. Sri Utpol Mondal	414/- Gr. II	442/- Gr. I	464/- Gr. I	601/-	1062/-
2. Sri Asis Banerjee	396/- Gr. II	-do-	-do-	-do-	-do-
3. Sri A.K. Pal	-do-	-do-	-do-	-do-	-do-
4. Sri R.N. Menon	-do-	-do-	-do-	-do-	-do-
5. Sri Apurba Sengupta	-do-	-do-	-do-	-do-	-do-
6. Sri S.K. Nazul	-do-	-do-	-do-	-do-	-do-
7. Sri S.P. Mondal	-do-	-do-	-do-	-do-	-do-
8. Sri C. Adhikari	-do-	-do-	-do-	-do-	-do-
9. Sri P.K. Roy	-do-	-do-	-do-	-do-	-do-
10. Sri S. Mallick	-do-	-do-	-do-	-do-	-do-
11. Sri N. Mukherjee	-do-	-do-	-do-	-do-	-do-

Yours faithfully,

Sd/-

Dy. Personnel Manager,

Kunustoria Area."

By pointing out that document the learned Lawyer for the management has urged that there is no anomaly in the fixation of pay of the Statistical Clerks of Kunustoria Area w.e.f. 1-1-79. The learned Lawyer for the union does not challenge the correctness of the calculation given in Ext. M-4. He has urged before me that it is not the case of grievance against fixation of pay w.e.f. 1-1-79 in terms of NCWA-II. The grievance of the Statistical Clerks of Kunustoria Area is that from 1-1-79 the Statistical Clerks of other areas namely Kenda etc. has been given one increment extra at the time of fixation of their pay. But the same has been denied to the Statistical Clerks of Kunustoria Area. On this point

the learned Lawyer for the union has taken me through the Exts. W-3 and W-5 which read as follows :

"Eastern Coalfields Limited

(A Subsidiary of C.I. Ltd.)

Office of the Chief General Manager,  
Kunustoria Area P.O. Toposi.

Ref. No. A-KNT/P&IR/23

Dated 21/22-8-87

To

The Personnel Manager (IR),

ECL HQ Sanctoria.

Dear Sir,

Please refer to your letter No. ECL/CMD/C-6E/17/521 dated 26th May 1987 regarding anomaly in pay fixation of Statistical Clerks of Kunustoria Area which was discussed in the meeting held with L.M.S.I (CITU).

An enquiry was conducted and it has been found that all these Statistical Clerks of Kunustoria Area are getting one increment less than Statistical Clerks of Kajora Area. The copies of pay fixation of Statistical Clerks of Kunustoria Area and also of Kajora Area are hereby enclosed for year ready reference and study.

From the above enquiries it has been observed that in Kajora Area they have fixed the basic of such clauses in NCWA-II giving one extra increment. The anomaly in the pay fixation which has arisen out of same pay scale, same designation and cover by the same seniority.

The Statistical Clerk get their basic of Rs. 630 as on 1-1-79 due to this but in Kunustoria they got their basic Rs. 601 as on 1-1-79 though all have been promoted as Statistical Clerk by Sanctoria on the same date and same grade.

You are requested to take necessary action into the above matter in the light of facts mentioned above so that the long pending dispute will be sort out.

Yours faithfully,

Sd/- R. Rathore,

Dy. Personnel Manager (IR),  
Kunustoria Area"

Encl : As above.

"Eastern Coalfields Limited

Office of the General Manager,

Kunustoria Area,

P.O. Toposi, Dist. Burdwan.

Ref. A-KNT/P&IR/8456

Dated 21-9-1985

The Personnel Manager (ED)

HQ., Sanctoria.

Dear Sir,

Sub :—Pay fixation of Statistical Clerk of Kunustoria Area

With reference to our letter No. ECL/CMD/C-6D/17/5253 dated 4-9-85, we are hereby furnishing below the detail information in respect of Statistical Clerk of Kunustoria Area. Further it is also pointed out that they were promoted and posted as Statistical Clerks from different Clerical status during October, 77 and since then they are in same grade (Tech. and Supvr. 'C') and their present basic wages is Rs. 1062 in grade 'C'.

They have given several representations on the plea that in other Areas Statistical Clerks have been given benefit one increment at the time of pay fixation of the employees as per NCWA-II.

To avoid anomaly in pay fixation and in some other Areas and H/Qrs. also Statistical Clerks have been promoted from Grade 'C' to Tech. and Supervisory Grade 'B'.

Therefore, you are requested to do the needful.

Yours faithfully,

Sd/- Jairam Singh,

Dy. Personnel Manager (IR)  
Kunustoria Area.

CC to : Dy. CPM (FD), Sanctoria

cc to : Dy. P. M. (IR), Sanctoria"

By pointing out the contents of these letters the learned Lawyer for the union has urged before me that there has been clear discrimination in the fixation of pay of the Statistical Clerks of Kunustoria Area. So they must be given one incre-

ment extra like the Statistical Clerks of other areas w.e.f. 1-1-79.

5. The learned Lawyer for the management has urged before me that the present Reference is not maintainable as the order of Reference has not conferred any power to this Tribunal to probe into the whole matter regarding the fixation of pay. He has urged before me that this Tribunal has only the jurisdiction to see whether the pay of the Statistical Clerks of Kunustoria Area has been properly fixed under NCWA-II. In this connection he has taken me through the schedule of the Reference which reads as follows :

#### "SCHEDULE

Whether the action of the General Manager, Kunustoria Area of E.C. Ltd., P.O. Toposi, Dist. Burdwan in denying one increment since 1979 as per NCWA-II to the Statistical Clerks of that Area is justified ? If not, to what relief the workmen concerned are entitled ?"

By pointing out the same he has urged before me that the management has fixed the pay of the Statistical Clerks of Kunustoria Area as per terms of NCWA-II which will be evident from the Ext. M-4. The union does not challenge the correctness of Ext. M-4. So there is nothing to show that the concerned workmen have been denied one increment as per terms of NCWA-II. Considering the language of the Reference I find that there is force in the contention of the learned Lawyer for the management. He has further urged before me that it may be that through mistake the pay of the Statistical Clerks of other areas has been fixed with one extra increment, but that does not confer any right to the concerned workmen to get one extra increment. It is very difficult to ignore this point also. So I find that the present Reference is not maintainable as the union failed to show any irregularity or anomaly in Ext. M-4.

6. Be that as it may, if my above finding be upset and it is found that the present case is maintainable, then the following will be my award on merits :

The concerned workmen have come with the allegation that they have been given one increment less at the time of pay fixation w.e.f. 1-1-79 in comparison with other Statistical Clerks of other areas with same seniority in the same establishment of Eastern Coalfields Ltd. On this point the learned Lawyer for the union has urged before me that the documents Exts. W-3 and W-5 are enough to prove that the pay of the concerned workmen was fixed with one increment less than the Statistical Clerks of other areas. From the language of the Exts. W-3 and W-5 (quoted above) there cannot be any hesitation to hold that in fact the pay of the concerned workmen was fixed denying one increment since 1-1-79. The contention of the learned Lawyer for the management that it may be a case of mistake that the pay of the Statistical Clerks of other areas has been fixed with one extra increment does not sound reasonable as there is no material in support of that contention. From the materials on record I find that there has been clear discrimination in fixation of pay of the concerned Statistical Clerks of Kunustoria Area. This view gets support from the cases reported in 1983 LLJ (2 SC) 504, 1983 Lab. I.C. (SC) 1671 and 1981 LLJ (2) 218.

7. It is the settled position of law that a workman is entitled to get equal remuneration for equal work. So the Statistical Clerks of Kunustoria Area is entitled to get one extra increment like the Statistical Clerks of other areas w.e.f. 1-1-79. This view gets support from the case reported in 1988 LLJ (1 SC) 396, 1987 LLJ (2 SC) 536. This will be my award on merits.

8. In the result, I find that the Reference is not maintainable and the concerned workmen are not entitled to any relief.

This is my award.

N. K. SHAH, Presiding Officer  
[No. L-22012/213/88-D.IV (B)]

का. आ. 1507—औद्योगिक विवाद अधिनियम, 1947) (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजगामार कोलियरी आफ एस ई सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 2-5-91 को प्राप्त हुआ था।

S.O. 1507.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Rajgamar Colliery of S.E.C.L. and their workmen, which was received by the Central Government on 2-5-1991.

#### ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(232)/1990

#### PARTIES :

Employers in relation to S.E.C.L. Rajgamar Colliery, Bilaspur (M.P.) and their workman, Shri P. K. Paleria, Overman, represented through the Rashtriya Koyla a Khadan Mazdoor Sangh (INTUC) 15-Block Quarter No. G-64 (SECL) Post Korba, District Bilaspur (M.P.)

#### APPEARANCES :

For Workman—Shri A. K. Kurrey.

For Management—Shri D. Kumar, Personnel Manager.

INDUSTRY : Coal Mining DISTRICT : Bilaspur (M.P.)

#### AWARD

Dated. the 19th April, 1991

This is a reference made by the Central Government Ministry of Labour, vide its Notification No. L-22012(186)/90-IR (Coal-II) dated 30-11-1990, for adjudication of the following dispute :—

"Whether the management of (Rajgamar Colliery of SECL), Bilaspur was justified in superseding Sri P. K. Paleria, Overman in the DPC held on or about July 1987 for Sr. Overman ? If not, to what relief the workman concerned is entitled to ?"

2. In this case statement on behalf of the workman was received by post. No written statement has been filed on behalf of the management.

3. On 8-4-1991 parties filed a Memorandum of settlement and verified the same. The terms of settlement are as under :—

#### TERMS OF SETTLEMENT

Considering the case of Shri P. K. Paleria, he was promoted to the post of Sr. Overman giving notional seniority with effect from 2nd February, 1989 and an office order bearing No. OGM, KB, PM(E), CH-RAJ/90/3598, dated 24th December, 1990 to this effect was issued by the Personnel Manager, SECL, Korba (East) (A copy enclosed), which was agreed by Shri P. K. Paleria. As a gesture of goodwill, the union accepted the notional seniority. It was decided on the request of the Union that Shri P. K. Paleria will get benefit of pay fixation from the date he was given notional seniority, but he will not get any arrears arising out of the fixation made from the date of his effect.

This is the final and full settlement of the above case."

4. I have gone through the terms of settlement. They are just, fair and in the interest of the workman concerned. I, therefore, record my award in terms of the settlement quoted above. No order as to costs.

V. N. SHUKLA, Presiding Officer

[No. L-22012/186/90-IR (C-II)]

नई दिल्ली, 7 मई, 1991

का. आ. 1508—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पारबेलिया कोलियरी आफ मै. ई. सी. एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 6-5-91 को प्राप्त हुआ था।

New Delhi, the 7th May, 1991

S.O. 1508.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Parbelia Colliery of M/s. E.C. Ltd. and their workmen, which was received by the Central Government on 6-5-1991.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL ASANSOL

Reference No. 12/90

#### PRESENT :

Shri N. K. Saha, Presiding Officer.

#### PARTIES :

Employers in relation to the Management of Parbelia Colliery of M/s. E.C. Ltd.

AND

Their Workman.

#### APPEARANCES :

For the Employers—Sri B. N. Lala, Advocate.

For the Workman—Sri B. Kumar, Joint Secretary of the Union.

INDUSTRY : Coal STATE : West Bengal  
Dated, the 25th April, 1991

#### AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(282)/89-IR (C-II) dated the 19th February, 1990.

#### SCHEDULE

"Whether the action of the Management of Parbelia Colliery of M/s. Eastern Coalfields Ltd., P.O. Nentoria, Dist. Purulia in superannuating Sri Parmeshwar Tanti, Underground Lander C.O.F. 19-7-85 without referring him to the Age Determination Committee for assessment of his age, is justified ? If not, to what relief the workman concerned is entitled ?"

2. The case of the concerned workman Sri Parmeshwar Tanti in brief is that in 1959 he got his initial appointment at Victoria Colliery under M/s. Bengal Coal Ltd. At the time of entry in service in the year 1959 he declared his age as 24 years and as proof of age he produced the school leaving certificate granted to him on 9-12-49 by the Head Master of Sishu Bikas Mandir, Barakar. Accordingly his age was recorded in the B Form Register. His year of birth was recorded as 1935 or date of birth as 7-11-1935.

3. In 1969 he was transferred to Parbelia Colliery. His service particulars were sent to the said Colliery by the former Employer. But ultimately a new B Form Register was opened by the present employer viz. Eastern Coalfields Limited and in the B Form Register his year of birth was wrongly recorded as 1925 without giving the workman any opportunity in this regard. On the basis of the same the workman was superannuated in 1985. The workman raised a dispute through union but the attempts of conciliation failed. The matter was sent to the Ministry of Labour and ultimately the Ministry of Labour has referred the dispute to this Tribunal for adjudication.

4. The employer has filed written statement contending inter-alia that the averments and allegations made by the workman are false. The year of birth was initially correctly recorded as 1925 and in the B Form Register maintained by the present employer the said year of birth has been correctly recorded. It is false that the year of birth of the concerned workman is 1935. The employer has also denied the other material averments of the written statement filed by the workman.

5. In this case the following cases have been referred by the respective parties :

The cases cited by the Union	The cases cited by the employer
5 S.C.L.J. page 3582	1975 L.L.J. (2) 445
1968 Lab. I.C. page 1436	1975 L.L.J. (2) 345
	1975 L.L.J. (1) 293
3 S.C.L.J. page 2140	1970 L.L.J. (2) 132
A.I.R. 1949 page 54	
1973 (2) S.C.C. 327	
A.I.R. 1969 S.C. 513	
A.I.R. 1953 S.C. 33	
A.I.R. 1981 S.C. 728	
1985 Lab. I.C. 1733	
1961 (2) F.L.R. 339	
1979 Lab. I.C. 1192	
1970 Lab. I.C. 611	
1960 (1) F.L.R. 587	
1960 (1) F.L.R. 587	
5 S.C.L.J. 204	

6. During the pendency of this case it has transpired that the present workman Sri Parmeshwar Tanti moved the Hon'ble High Court in Writ jurisdiction under Article 226 of the Constitution of the India challenging the recording of his year of birth as 1925 by the present employer. The said Civil Rule No. 9718 (W) of 1985 was disposed of by the Hon'ble High Court of Calcutta on 18-7-85. The following order was passed in the said Writ Application :

"Considering the facts and circumstances of the case interim order stands vacated as the 'B' form register shows the correct date of birth which has been duly acknowledged to be so by the petitioner."

From the order of the Hon'ble High Court it appears that the present workman Sri Parmeshwar Tanti acknowledged the year of birth recorded in the present B Form Register as correct. The representative of the union has urged before me that Parmeshwar Tanti had sworn a wrong affidavit and on the basis of the same the Hon'ble Court passed the above order. With due respect to his contention I like to say that this Court has no jurisdiction to say that the order was passed on the basis of wrong affidavit. The fact remains before this Court that the Writ Petition has been disposed of against the present workman Parmeshwar Tanti on a finding that the correct date of birth has been recorded in the present B Form Register.

7. The representative of the union has filed written argument and the same has been kept with the record. The union has firstly contended before this Tribunal that Parmeshwar Tanti is not a party to the present Reference case. According to him the union is the party in this Reference Case and as such the union is not bound by the findings of the Hon'ble High Court. It has been further urged before me that the present dispute is a collective dispute and not an individual dispute. But I am unable to look eye to eye with the learned representative of the union on this point. I find that this dispute has been raised on behalf of Parmeshwar Tanti alone by the union and so Parmeshwar Tanti is bound by the decision of the Hon'ble High Court passed in the writ petition filed by him. I find that it is an individual industrial dispute and not a collective dispute.

8. Secondly it has been contended before me by the union that the principles of resjudicata will not be applicable in a proceeding pending before the Tribunal. It is true that this Tribunal is not a Court but the principles and provisions of C.P.C. are applied in a proceeding pending before this Tribunal whenever necessary. Moreover some of the provisions laid down in the C.P.C. may be applied as principles of natural justice. The learned Lawyer for the management has cited before me the case reported in 1973 (II) L.L.J. page 345. From the principles laid down in the said case I find that the principle of resjudicata is not unknown in the arena of industrial dispute. So considering the position of law and the facts and circumstances, I find that the union and the concerned workman Sri Parmeshwar Tanti are bound by the findings of the Hon'ble High Court passed in the said writ petition (Ext. M-2). So I find that the present Reference is not maintainable.

9. The management has raised objection that the union has no locus-standi to represent the workman in the present case. In this case the union has failed to file any document to show that the present workman was a member of the concerned union. The workman has also not claimed in this case that he is a member of the union and the union had the authority to raise the dispute on his behalf. On that score it may be said that the union has no jurisdiction and the Reference is bad. But my finding is otherwise. In this case if the contention of the workman be true then he was superannuated and his service was terminated before the actual date of superannuation. In my opinion this case is covered by Section (2-A) of the Industrial Disputes Act. So I hold that the present case is maintainable even if it is found that the union has no jurisdiction to raise the dispute on behalf of the workman. It is to be held in this case that the workman himself has raised the dispute u/s (2-A) of the Industrial Disputes Act.

10. Be that as it may, if ultimately my first finding regarding maintainability of the case on the point of resjudicata is upset and if I be asked to give the award on merit, the following will be my award on merit.

11. In this case Parmeshwar Tanti has come with the case that his year of birth was recorded as 1935 in the B Form Register when he entered in the service in 1959. There is no dispute that this man entered in the service in 1959. It is admitted position that a new B Form Register was opened by the present employer viz. Eastern Coalfields Limited after nationalisation of the Collieries. It is to be presumed that the year of birth in the present B Form Register was recorded on the basis of the year of birth recorded in the original B Form Register maintained by the erstwhile management. The workman was challenged the entry of the present B Form Register. So it was the duty of the present employer to produce the original B Form Register. But the management has failed to do so. The workman has filed a transfer certificate from School showing that his date of birth was recorded as 7-11-1935. But the workman has failed to prove the same.

12. Considering the background and all the facts and circumstances of the present case, I find that it is a fit case which may be referred to Age Determination Committee as the difference of age is 10 years. I find that if the case be maintainable, then the concerned workman Parmeshwar Tanti shall be sent to Appex Medical Board for determination

of his age and if it is found that—

(i) he was born on or before 1-7-1925 then he will not get any relief in this case ;

(ii) if it is found by the Apex Medical Board that Parmeshwar Tanti was born after 1925 and he has attained 60 years of age then Parmeshwar Tanti shall be paid by the management 50% of the wages for the said period commencing from the date of his superannuation and

(iii) if it is found that Parmeshwar Tanti has not yet attained the age of 60 years then he shall be reinstated in service with immediate effect with full back wages.

13. In the result I find that the present Reference Case is not maintainable.

This is my award.

N. K. SAHA, Presiding Officer

[No. L-22012/282/89-IR (Coal-II)]

नई दिल्ली, 9 मई, 1991

का. ग्रा. 1509—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में, बस्तान कोलफिल्ड लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

New Delhi, the 9th May, 1991

S.O. 1509.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Western Coalfields Limited and their workmen which was received by the Central Government on the 7-5-1991.

#### ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(92)/1985

#### PARTIES:

Employers in relation to the management Western Coalfields Ltd., Baikunthpur Area, P.O. Baikunthpur Colliery, District Surguja (M.P.) and their workman, Shri Virghari Parsad Kashyap, Driver, represented through the M.P. Colliery Workers Federation, P.O. South Jhagrakhand Colliery, District Surguja (M.P.)

#### APPEARANCES :

For Workman.—Shri G.P. Sharma.

For Managment.—Shri R. Menon, Advocate.

INDUSTRY.—Coal Mining

DISTRICT.—Surguja

#### AWARD

Dated, April 23, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012(3)/85-D.V. dated 16-10-1985, for adjudication of the following dispute :—

“Whether the termination/dismissal of Shri Virghari Prasad Kashyap, Driver of Baikunthpur Area of Western Coalfields Limited by the General Manager, Baikunthpur Area of WCL vide their letter No. GH/BKP/PM/Case-Girdhari/8254-59 dated 18/19-2-1984, without proper enquiry, is justified? If not, to what relief the workman is entitled?”

2. Facts leading to this case are that the delinquent workman was charge-sheeted as follows and after departmental enquiry his services were terminated vide letter No. GH/HKP/PM/Case Girdhari/8254-59 dated 18/19-2-1984:—

“That you were transferred from Baikunthpur Hqrs to Katkona Colliery vide this office order No. GM/BKP/PM/59P/1249-98 dated 1-4-82 and that till date, you have not reported for duty. This amounts to disobedience of the lawful orders of the competent authority and unauthorised absence from duty w.e.f. 8th April '82. The above acts alleged to have been committed by you, if proved, would amount to misconduct under the NCDC Conduct and Discipline Rules and even otherwise what is misconduct has to be reasonably construed.”

3. My learned predecessor vide proceedings dated 30-9-86 held that the enquiry is vitiated and directed the management to prove the misconduct of the workman before this Tribunal. Thus the material points of the case of the respective parties are as under.

4. The workman was serving as Driver in Baikunthpur Area of W.C. Ltd. The General Manager vide his order dated 1-4-82 transferred him to Katkona Colliery and relieved him on the same date directing him to join there which is said to be about 50 Kms. from Baikunthpur. The workman says that he requested the management to cancel the order on personal grounds and non-availability of quarter at Katkona. Several reminders were made to the management but the management kept quiet for a year and finally issued an office order dated 9-2-83 asking him to join his duties at Katkona. The workman obeyed the orders and went to Katkona to join his duties. He gave his joining report on 11-2-1983. He also requested the Personnel Officer and Executive Engineer to allow him duty transfer order but they told him that two drivers were already surplus and therefore there was no vacancy. Hence the workman had to return back to Baikunthpur.



5. The workman came back to Baikunthpur on 12-2-1983 and told the General Manager, Baikunthpur all about this. He further requested the General Manager to allow him to work at Baikunthpur as he was refused employment at Katkona. The domestic enquiry was held against him and ultimately his services were determined.

6. The management say that the workman deliberately remained absent from duty. He never joined, hence after due enquiry his services were terminated which are just and legal. Reference is, therefore, liable to be rejected.

7. The management in the alternative has prayed that in case the D.E. is held to be vitiated it may be permitted to lead evidence and accordingly the management was permitted to lead evidence in relation to the misconduct of the workman.

8. Following issues were framed by learned predecessor and my findings are recorded against each of them.

#### ISSUES.

1. Whether the domestic/departmental enquiry is proper and legal?
2. Whether the punishment awarded is proper and legal?
3. Whether the management is entitled to lead evidence before this Tribunal?
4. Whether the termination/action taken against the workman is justified on the fact of the case?
5. Relief and costs.

#### REASONS FOR MY FINDINGS :

9. Issue Nos. 1 & 3.—My learned predecessor vide proceedings dated 30-9-1986 has already held that the departmental enquiry is vitiated and directed the management to lead evidence before this Tribunal in relation to the misconduct of the workman.

10. Issue Nos. 2, 4 & 5.—Before looking into the evidence on record one material thing which has to be kept in mind is that as per statement of claim of the workman he had made a request to the management to consider his case and cancel the order of transfer but no orders were passed and finally he was asked vide order dated 9-2-1983 to join his duties at Katkona and he accordingly went to join his duty and gave joining report on 11-2-1983 (Para 3 & 4).

11. The settled principle of common sense is that mere representation cannot be taken as a ground for not joining his duties at Katkona immediately after 1-4-1982 but the workman himself says in his statement that he waited for the orders and when he was again ordered to join on 9-2-83 he reported at Katkona on 11-2-83. If there is any evidence contrary to these pleadings it has to be ignored.

12. Thus the fact remains that there is neither any pleading to show that his case was under consideration nor there was any justification on the part of the workman not to resume his duties when he was relieved on 1-4-82 within the reasonable time but he waited till second order dated 9-2-83 was issued and accordingly he gave a joining report on 11-2-1983. Thus the workman has committed obvious misconduct in not joining his duties immediately after he was relieved on 1-4-1982.

13. Now coming to the evidence on record management has produced the entire D.E. file, the documents Ex. M/1 to Ex. M/7. Management has also examined R.P. Srivastava as M.W. 1 and R. C. Aggarwal as M.W. 2. Workman has examined himself in support of his case and proved documents Ex. W/1 to Ex. W/9. It may be pointed out here, inter alia, that in the deposition of M.W. 2 R.C. Agarwal Ex. W/8 has been recorded Ex. W/1 and Ex. W/12 has been recorded as Ex. W/2.

14. There two documents are material documents. Ex. W/8 is dated 23-2-83 according to which Shri J. K. Ghosh of the W.C. Ltd. directed the Superintendent of Mines, Katkona to allow the workman to join his duties. Ex. W/12 is another letter of the General Manager, Baikunthpur, asking the Superintendent of Mines, Katkona to allow the workman to join his duties by 15-9-1983 and inform accordingly.

15. Reverting back to the testimony of M.W. 2, R.C. Agarwal, who was Mines Superintendent, Katkona Colliery in 1983 has not been able to show in his cross-examination whether document Ex W/8 was received by him. He admits that it was sent by the Personnel Manager, Shri J.K. Ghosh (para 7 of his deposition).

16. Then coming to his testimony (para 8) when he was shown Ex. W/12 he again said that he does not remember that he had received this letter or not or whether he had replied or not.

17. W.W. 1 says that he had joined his duty. He has also proved Ex. W/1 to Ex. W/10. Ex. W/2, Ex. W/3 and Ex. W/4 are representation of the workman to cancel his transfer order.

18. Tone of Ex W/2 is, however, shows adamancy of the workman showing his intention to continue at Baikunthpur only. This is obvious another addition to the misconduct of the workman who himself chose to remain at the headquarters at Baikunthpur. He has, however, given his personal reasons for remaining at the headquarters at Baikunthpur in Ex. W/3 and Ex. W/4. But that would not mitigate his misconduct because he ultimately admitted that he had joined at Katkona.

19. Ex. W/5 is letter dated 9-2-1983 according to which the workman was asked to join at Katkona with seven days from the date of the receipt of this letter. Ex. W/6 is a copy of the joining report according to which he had joined on 11-2-1983. Various letters Ex. W/7 onwards disclose that somehow or the other the workman could not join at Katkona. Ex. W/18 is a letter dated 24-2-1984

which again shows that office of the W.C.L. Nagpur had asked Mr. Goswamy, General Manager, Baikunthpur Area to help him as early as possible. Thus it can be safely presumed that the workman is not incorrect when he says that he was not permitted to join when he gave his joining report on 11-2-1983 and this fact is amply established from documents Ex. W/7 to Ex. W/20 and the evidence of the workman in this regard has to be accepted.

20. From the above evidence, it is apparent that non-joining of the workman as per order Ex. W/1 dated 1-4-82 until another order Ex. W/5 dated 9-2-83 was issued to the workman no serious view was taken by the management for non-compliance of the order Ex. W/1 dated 1-4-1982 and he was asked to report within seven days as per Ex. W/5 dated 9-2-1983. He reported for duty on 11-2-1983 and it appears that he was not permitted to join and repeated orders were issued by the management to permit him to join at Katkona.

21. Thus in all the circumbance of this case, the only misconduct that appears to have been established is that he kept sitting from 1-4-82 until the order Ex. W/5 was issued and he reported on 11-2-83 but because the management has not taken a serious view in the matter he does not deserve punishment he has been awarded. He would, however, not be entitled to the salary from 1-4-82 to 10-2-1983 and this period would not be treated for any ancillary benefits though he would be deemed to be in continuous service. My findings are accordingly recorded as follows :—

1. Punishment awarded is neither proper nor legal.
2. Termination action taken against the workman is not justified on the facts of the case.
3. He is entitled to be reinstated but without wages for the period from 1-4-82 to 10-2-1983 and this period of his absence shall be treated as 'dies non' and he will not be entitled to benefits for this absence. He would, however, be entitled to all back wages from 11-2-1983 onwards and all other benefits arising therefrom. He will report on duty as soon as the award is published.

Reference is answered as follows :—

The termination/dismissal of Shri Virghari Prasad Kashyap, Driver of Baikunthpur Area of Western Coalfields Limited by the General Manager Baikunthpur Area of W.C.L. vide their letter No. GH/DKP/PM/Chse-Girdhari/8254-59 dated 18/19-2-1984 without proper enquiry is unjustified. He is entitled to the relief as per my findings no. 3 above. No order as to costs.

V. N. SHUKLA, Presiding Officer  
[No. L-22012/3/85-D.V.]

का० आ 1510—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन. सी. पी. एच. कोलियारी प्राक

डबल्यू सी. लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार का 7-5-91 को प्राप्त हुआ था।

S.O. 1510.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of NCPH Colliery of W.C. Ltd., and their workmen, which was received by the Central Government on the 7-5-1991.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT JABALPUR (M.P.)

Case No. CGIT/LC(R)(72)/1984

#### PARTIES :

Employers in relation to the management of N.C.P.H. Colliery of Western Coal Ltd. Distt. Surguja (M.P.) and their workman, Shri Dafedar Singh, represented through the Bhartiya Khadan Mazdoor Sangh Branch NCPH Colliery, District Surguja (M.P.).

#### APPEARANCES :

For Workman—Shri P. D. Pathak, Advocate.

For Management — Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mining. DISTRICT : Surguja (M.P.)

#### AWARD

Dated : April, 23rd, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22011/71/83-D.III(B)/D.V. dated 10-9-1984, for adjudication of the following dispute:—

“Whether the action of the management NCPH Colliery of W.C. Ltd., Chirimiri Area Distt. Surguja (M.P.) terminating the services of Shri Dafedar Singh w.e.f. 17-11-82 is justified and if not to what relief the workman was entitled to ?”

2. Facts leading to this case are that the workman, Shri Dafedar Singh, was serving as a General Mazdoor at N.C.P.H. Colliery of Western Coalfields Ltd. Chirimiri Area, District Surguja. His services were discontinued with effect from 17-11-82.

3. According to the workman he was Secretary of N.C.P.H. Colliery Branch. He was working there since 1974 continuously and is a Protected Workman under the Industrial Disputes Act. His services were terminated on the plea of unauthorised absence and he lost lien on his appointment under Clause 10(E)

of the Standing Orders applicable to the employees of N.C.P.H. Colliery. His termination from service is not covered under the said Clause.

4. The workman was on leave from 1-2-82 to 3-2-82 and he worked on 4-2-82 to 6-2-82. It is alleged that from 7-2-82 he absented himself continuously. He was not absent beyond a period of leave originally granted. Since his leave was not extended by him therefore Clause 10(c) of the Standing Orders is not applicable in this case. Hence his termination is illegal and bad in law. Even otherwise also the management must have kept his name in the employees badli list if his case is covered under section 10(e) of the Standing Orders. The action of the management amounts to victimisation and unfair labour practice. The workman is innocent. In any case, his termination amounts to retrenchment within the meaning of Sec. 25F of the I.D. Act. He has not been given retrenchment compensation. His termination is void ab initio. He is entitled to be reinstated with all back wages and consequential benefits.

5. The management denied the claim of the workman. According to the management, the workman was irregular in attendance. In March 1981 after taking leave he remained absent without leave. He was asked to resume duties within ten days failing which he will be removed from service. His name was struck off from the rolls treating him as deserter. Subsequently on his representation his absence was condoned for the period from 14-3-81 to 15-12-81 and taking a sympathetic and lenient view he was taken back on duty. But again the workman absented himself from duty without permission or sanction from 7-2-82. Neither his address nor his whereabouts were intimated. A letter was issued on 27-5-82 informing the workman that he is absenting himself from 7-2-82 and calling upon him as to why action should not be taken against him. He was also asked to submit his explanation. Workman neither replied to the notice nor joined his duties. The management was therefore, left with no option but to terminate him from service vide letter dated 5th June, 1982. For the first time he appeared on or about 17-11-82 and requested for employment. Since his services were already terminated he was not taken back on duty.

6. Absenting from duty without permission and information is misconduct under the Standing Orders. A formal charge-sheet could not be issued nor an enquiry could be held as he was neither available in the colliery nor he gave any address. The management, however, crave leave to permit before the Tribunal to prove misconduct of the workman. Several criminal cases including murder cases are pending against the workman and he is in jail. He is extremely dangerous. He could not be taken back in service and the reference is liable to be rejected.

7. Rejoinder was filed by the management, but no rejoinder was filed on behalf of the workman.

8. My learned predecessor vide order dated 13th August, 1986 directed the management to file the necessary documents and adduce evidence in relation to the misconduct of the workman.

9. At the outset it must be pointed out that the material facts pleaded by the management have not been denied which follows by itself that not only the workman was habitual absentee but he remained absent from duties without permission or sanction from 7-2-1982 onwards and joined his duties for the first time on or about 17-11-1982, but prior to this his services were already terminated. It would be for the workman to show that remaining absent from duty for such a long period was justifiable or he remained absent for valid reasons. This long absence itself is sufficient to remove the workman from service and obviously it would not amount to retrenchment and the question of retrenchment compensation does not arise. The alleged clause of the Standing Orders has no application to the present case. Not only this but the management has filed a list of 36 criminal cases pending against the workman not only showing that he is in Jail but also that he is being tried for offence under Sec. 302, 307, 392, Internal Security Act etc. etc. and filed the certified copies of those criminal cases in support of the list. Thus the workman appears to be a hardened criminal and reasons for his remaining absent are nothing but his being under detention for long period and in this regard my learned predecessor has also made certain observations in his order.

10. Suffice it to say that the workman has no case. His termination is justifiable and he is not entitled to any relief. Reference is accordingly answered in the negative with no order as to costs.

V. N. SHUKLA, Presiding Officer

[No. L-22011/71/83-D.II(B)/D.V]

का. आ. 1511—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. वेस्टर्न कोलफील्ड्स लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर में पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

S.O. 1511.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Western Coalfields Limited and their workmen, which was received by the Central Government on the 7-5-91.

#### ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

JABALPUR (M.P.)

Case No. CGIT/LC(K)(48)/1987

PARTIES :

Employers in relation to the management of M/s. Western Coalfields Limited, Sub-Area

No. IV, Ballarpur Collieries, District Chandrapur (MS) and their workman Shri Mangali Nankoo, C. C. Machine Operator, C/o Dawara Jagnath Bullum, New Majri Colliery, P. O. Shivaji Nagar, District Chandrapur (M.S.).

#### APPEARANCES :

For Workman.—None.

For Management.—Shri R. Menon, Advocate.

INDUSTRY : Coal Mining

DISTRICT : Chandrapur (MS).

#### AWARD

Dated, April, 24th 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012/19/86-D.V. dated April 28, 1987, for adjudication of the following dispute :—

“Whether the management of M/s. Western Coalfields Limited, in Sub-Area No. IV, Ballarpur Collieries, P.O. Ballarpur, District Chandrapur was justified in dismissing the services of the workman Shri Mangali Nankoo w.e.f. 30-7-1985 ? If not, what relief is the workman concerned entitled to ?”

2. On receipt of the reference order dated 28th April, 1987 parties were noticed to file their respective claims. Management filed its statement of claim. Workman did not do so till 23-4-1991.

3. It appears that the workman is not interested in prosecuting his case. I therefore record a no dispute award. Parties will bear their own costs.

V. N. SHUKLA, Presiding Officer  
(No. L-22012/19/86-DV)

का. आ 1512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लोअर केन्डा कोलियारी आफ मै. ई. सी. लि. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 7-5-91 प्राप्त हुआ था।

S.O. 1512.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Lower Kenda Colliery of M/s. E. C. Ltd., and their workmen, which was received by the Central Government on the 7-5-91.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 14/89

#### PRESENT :

Shri N. K. Saha, Presiding Officer.

#### PARTIES :

Employers in relation to the Management of Lower Kenda Colliery of M/s. E. C. Ltd.

AND

Their Workman.

#### APPEARANCES :

For the Employers—Sri P. K. Das, Advocate.

For the Workman—Sri M. Mukherjee, Advocate.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 26th April, 1991

#### AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-22012(157)/88-D. IV. B dated the 6th March, 1989.

#### Schedule

“Whether the action of the Management of Lower Kenda Colliery of M/s. E. C. Ltd., P. O. Bahula, Dist. Burdwan in dismissing Sri Ramhari Nayak, Pit Clerk w.e.f. 16-5-85, is justified ? If not, to what relief the workman concerned is entitled ?”

2. The case of the workman in brief is that Sri Ramhari Nayak was a Pit Clerk of Lower Kenda Colliery. He absented himself from duty w.e.f. 3-11-84 without any leave or authority. So he was served with a chargesheet dated 16/18-4-85 (Ext. M-1). The workman submitted a reply stating that for some troubles he left home and the family during that period and for that he could not attend his duty (Ext. M-2). The authority was not satisfied with the explanation submitted by the workman. So a domestic enquiry was held in which he was found guilty and ultimately he was dismissed from service.

3. Attempts of conciliation failed. The matter was referred to the Ministry of Labour, Govt. of India and ultimately the Ministry of Labour has referred the dispute to this Tribunal for adjudication.

4. The management has failed written statement contending inter-alia that the concerned workman absented himself from duty without any reasonable explanation. He was found guilty in the domestic enquiry and he was rightly dismissed from service w.e.f. 16-5-85.

5. In this case the union filed the written statement challenging the validity of the domestic enquiry. But during hearing of the case the fairness and validity of the domestic enquiry was not challenged. I have also found that the domestic enquiry was properly and fairly held following the principles of natural justice (vide order dated 12-4-91).

6. In this case the allegation against the concerned workman is that he absented himself from duty without authority from 3-11-84 and for that he was served with a chargesheet dated 16/18-4-85 (Ext. M-1). The written reply given by the workman has been marked as Ext. M-2. The management found that the explanation submitted by the workman was not satisfactory.

7. Considering the nature of the case and the facts and circumstances, I find that the learned domestic Enquiry Officer has rightly found the workman guilty for the unauthorised absence as there is no reasonable explanation for the unauthorised absence for a long period.

8. Now comes the question of punishment. This Tribunal has the authority to see whether the punishment is proportionate with the offence committed by the workman. In this case the workman was absent without any authority for a long period. For that he has been dismissed from service. But the punishment of dismissal from service is worse than capital punishment. Hon'ble Supreme Court has held that the capital punishment should be imposed in a rare of the rarest cases. Considering that principle I find that the punishment imposed in this case is disproportionate with the offence committed by the concerned workman. I find in a case like the present one, if 50 per cent of the back wages be forfeited that would meet the ends of justice. So I am inclined to set aside the punishment of dismissal and impose lesser punishment.

9. In the result, I find that the dismissal of the concerned workman Sri Ramhari Nayak w.e.f. 16-5-85 was not justified. Sri Ramhari Nayak has died on 2-5-89. So Ramhari Nayak shall stand reinstated in service w.e.f. 16-5-85 and he shall be paid 50 per cent of the back wages till 1-5-89. It should be treated that Ramhari Nayak died during his service period and his heirs should be given all the benefits under National Coal Wage Agreement as admissible to the heirs of a person who died during service period. The period from 3-11-84 to 15-5-85 shall be treated as leave without pay.

This is my Award.

N. K. SAHA, Presiding Officer  
[No. L-22012/157/88-D-IV(B)]

का. आ. 1513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रानिपुर कोलियारी आफ मै. ई. सी. लि. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

S.O. 1513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Ranipur Colliery of M/s. E.C. Ltd., and their workmen, which was received by the Central Government on the 7-5-91.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL ASANSOL

Reference No. 58/88

PRESENT :

Shri N. K. Saha, Presiding Officer.

PARTIES :

Employers in relation to the management of Ranipur Colliery of M/s. Eastern Coalfields Ltd.

AND

Their workman

APPEARANCES :

For the Employers—Sri B. N. Lala, Advocate.

For the Workman—Sri B. Kumar Joint Secretary of the union.

INDUSTRY : Coal. STATE : West Bengal

Dated, the 26th April, 1991

#### AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's order No. L-24012(27)/88-D-IV(B) dated the 1st August, 1988.

#### SCHEDULE

"Whether the action of the Management of Ranipur Colliery of M/s. Eastern Coalfields Ltd., P.O. Neotoma, Dist. Purulia in stopping the services of Sri Sukhran Harijan, Underground Loader w.e.f. 1-7-1986 by not publishing the findings of the Age Determination Committee was justified? If not, to what relief the workman concerned is entitled and from date?"

2. The case of the union in brief is that Sri Sukhran Harijan was an underground loader of Ranipur Colliery under Eastern Coalfields Ltd. Sri Sukhran Harijan, the concerned workman joined in service in 1959 and he became a member of the Coal Mines Provident Fund and he was allotted the number C-284063. In the Provident Fund records his year of birth was recorded as 1936. The B Form Register was reconstructed by the present employer and in that register his year of birth was recorded as 1926. He was served with a notice of superannuation w.e.f. 1-7-86. He raised a dispute but to no effect.

3. A dispute was raised by the union. Attempts of conciliation failed. The matter was referred to the Ministry of Labour, Govt. of India and ultimately it has been sent to this Tribunal for adjudication.

4. The management has filed written statement contending inter-alia that the year of birth of the concerned workman was recorded as 1926 in the B Form Register. He attained the age of 60 years on 1-7-86 and accordingly he was superannuated. Ranipur Colliery was nationalised w.e.f. 1-5-1973. The workman put his L.T.I. on the B Form Register where his age was recorded. It is false that the year of birth of the present workman is 1936. The management has denied all the material averments made by the union in its written statement.

5. At the very outset the learned lawyer for the management has urged before me that the union has no locus-standi to raise the present dispute on behalf of the workman as there is no document to show that the workman is a member of the concerned union. With due respect to his contention I like to say that in the instant case the service of the workman was stopped w.e.f. 1-7-86. It is the case of the workman that he was wrongly superannuated. So in my opinion, this case comes within the scope of Section (2A) of the Industrial Disputes Act. I find that it is to be treated that as if the dispute has been raised by the workman himself and not by the union. So I find that the Reference is maintainable.

6. In this case the workman has come with the case that his year of birth is 1936. On the other hand it is case of the management that the year of birth of the workman is 1926 which will be evident from the B Form Register Ext. M-1. It is true that this workman entered in service in the year 1959. The learned lawyer for the management has urged before me that in this case the employer has produced the original B Form register Ext. M-1. So the workman is bound by the same. On this point he was relied on the principles laid down in the case reported in Lab. I.C. 1983 Vol. 16 page 160 and Lab. I.C. Vol. 15 page 297. Further he has urged before me that there is an Agreement of J.B.C.C.I. that if there be no interpolation in the entries of B Form register the workman is bound by the same. By pointing out the same he has urged before me that in the instant case the court must hold that the entries in the B Form register (Ext. M-1) are correct. With due respect to his contention I like to say that the B Form register Ext. M-1 shows that it was prepared by the erstwhile management namely M/s. B. Mondal & Company but it is not a contemporaneous document. The workman entered in service in 1959, but this B Form Register was prepared in 1973. It is admitted that the colliery was taken over on 1-5-73. This present B Form Register was prepared either after nationalisation or just before the nationalisation.

So I am not prepared to attach much importance to the entries of this B Form Register which is not a contemporaneous document.

7. Be that as it may, it is case of the workman that in the Coal Mines Provident Fund records his year of birth is recorded as 1936. Inspite of best efforts the documents of the Coal Mines Provident Fund could not be procured. It is the settled position that if there is a difference in the entries of B Form Register and in the records of Coal Mines Provident Fund, the matter should be referred to Apex Medical Board for determination of age.

8. Considering the entire background of the present case and the facts and circumstances, I find that it is a fit case where the workman may be referred to the Apex Medical Board for determination of his age.

9. In the result I find that the stoppage of service of the concerned workman w.e.f. 1-7-86 without age determination was not justified. The concerned workman shall be referred to Apex Medical Board for determination of his age and if the Apex Medical Board find—

- (i) that the workman was born on or before 1926 then the workman shall not get any relief;
- (ii) if it is found by the Apex Medical Board that the workman was born after 1926 but he has attained the age of 60 years in the meantime, when he shall be paid 50% of the back wages w.e.f. 1-7-86 till the date of attaining the age of 60 years and
- (ii) if it is found by the Apex Medical Board that the workman has not yet completed the age of 60 years, in that event the workman shall be reinstated in service with immediate effect with full back wages w.e.f. 1-7-86.

This is my award.

N. K. SAHA, Presiding Officer

[No. L-24012/27/88-DIV(B)]

नई दिल्ली, 10 मई, 1991

का. आ 1514.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीडिपुर 9 एण्ड्स 10 पिट्स कोलियोरी आफ मै. ई.सी. लि. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असानसोल के पंचयट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-91 को प्राप्त हुआ था।

New Delhi, the 10th May, 1991

S.O. 1514.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sodepur 9 & 10 Pits Colliery of M/s. E. C. Ltd., and their workmen, which was received by the Central Government on the 9-5-91.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 22/87

#### PARTIES :

Employers in relation to the Management of Sodepur 9 & 10 Pits Colliery of M/s. E. C. Ltd.

AND

Their Workman.

#### APPEARANCES :

For the Employers—Sri B. N. Lala, Advocate.

For the Workman—Sri J. P. Gupta, Advocate.

INDUSTRY : Coal.

STATE : West Bengal.

Dated, the 30th April, 1991

#### AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Ministry's Order No. L-19012(130)/86-D.IV(B) dated the 9th June, 1987.

#### Schedule

"Whether the action of the Management of Sodepur 9 & 10 Pits Colliery of M/s. E. C. Ltd., in terminating the services of Sri Madhusudan Ram, Tyndal, Sodepur 9 & 10 Pits Colliery w.e.f. 1-7-82 on the ground of his attaining the age of superannuation was justified? If not, to what relief the workman is entitled?"

2. The case of the concerned workman Madhusudan Ram in brief is that he joined as a Tyndal in Sodepur Colliery prior to nationalisation and he was issued Identity Card by the erstwhile management M/s. Bengal Coal Co. Limited showing therein his year of birth as 1925. After nationalisation he was granted fresh Identity Card showing his year of birth as 1925.

During his service period he was transferred as Tyndal to Chinakuri Colliery in 1960 and again he was transferred back to Sodepur Colliery in 1974.

3. In the year 1980 the workman attended before the Medical Board at Barachak House of the Area but no adverse communication about inability or assessment of age so determined by the said Board was ever communicated to the workman. In 1980 he was issued with a letter that he had attained the age of superannuation and he requested the management to withdraw that notice. But to no effect. He raised a dispute through the union. Attempts of conciliation failed. The matter was referred to the Ministry of Labour and ultimately the Ministry of Labour has sent this dispute to this Tribunal for adjudication.

4. The case of the management in brief is that in the B. Form register maintained by the erstwhile management the year of birth of the concerned workman was recorded as 1920. As per that record the workman was served with a notice of superannuation w.e.f. 1-7-80. The workman raised a dispute. He was referred to Age Assessment Committee. On 16-4-80 the age of the workman was assessed as 58 years and accordingly the entry of the B Form register was corrected and 1922 was recorded as his year of birth and accordingly he was superannuated w.e.f. 1-7-82. The other averments made by the workman in his written statement are false.

5. The workman of this case entered in service in 1953 under M/s. Bengal Coal Co. Ltd. But the management has failed to produce the original B Form register maintained by M/s. Bengal Coal Co. The management has filed the B Form register prepared after nationalisation. The relevant entry of the B Form register has been marked as Ext. M-1 in this case. From this B Form Register we find that the year of birth was recorded as 1920 but it was corrected as 1922. There is endorsement against the entry which reads as follows :

"Year of birth extended 1922 as per Dy. CPM's letter No. ECL/DA/C-6/35/1535 of 9-5-80".

नई दिल्ली, 8 मई, 1991

According to the management in 1980 when the workman was served with a notice of superannuation there was dispute and at that time he was referred to Age Assessment Committee and as per report of that Committee his year of birth was changed to 1922 from 1920. In the written statement the workman has made the following statement :

"That in the year 1980 the workman concerned attended before the Medical Board conducted at Barachak House of the Arca but no adverse communication about inability or assessment of age so determined by the said Board was ever communicated to the workman concerned and in spite of repeated requests no answer were forthcoming from the management."

From the above statement it appears that the workman appeared before the Age Assessment Committee and he was examined but the result was not communicated. On the other hand the workman as WW-1 stated on oath that he was referred to a Medical Board by the Eastern Coalfields Ltd., authority but he did not find any Medical Officer when he went there. There was no medical examination and he came back. This statement on oath is against the statement made by him in the written statement. The management could not produce the medical report and the other connected papers to show that actually the workman was examined by the Medical Board. So the picture is not very clear. The workman has produced two Identity Cards granted by M/s. Bengal Coal Company and Eastern Coalfields Ltd., (Exts. W-1 & W-1/1). In both the Identity Cards the year of birth has been recorded as 1925. It has been urged from the side of the management that these Identity Cards are fabricated documents. The learned Lawyer for the management has urged before me that the workman is bound by the entries of the B Form register Ext. M-1, on which he put his L.T.I. which will be evident from the report of the Finger Print Expert. In support of his contention he has relied on the principles laid down in the case reported in 1982 Lab-I.C. (15) page 297 and Lab. I.C. 1983 (16) page 160. On the other hand the learned Lawyer for the workman has cited before me the case reported in 1981 L.L.J. (I) page 271 to show that in a case like the present one the workman shall be referred to the Apex Medical Board for determination of his age.

6. Considering all the facts and circumstances of the present case and the entire background, I find that it is a fit case where the workman shall be referred to Apex Medical Board. But considering the facts and circumstances I am inclined to keep penal clause both for the workman and the employer.

7. In the result I find that the termination of services of Sri Madhusudan Ram, Tyndal the concerned workman of this case w.e.f. 1-7-82 on the ground of his attaining the age of superannuation was not justified. The concerned workman shall be referred to Apex Medical Board for determination of his age and

- (i) If the Apex Medical Board finds that the workman was born in 1922 or before the workman shall not get any relief in this case. In that event the workman shall pay a sum of Rs. 5000 (Rupees Five thousand) to the management as cost of this proceeding and the Management will be at liberty to recover the said amount through legal action.

or

- (ii) if the Apex Medical Board finds that the concerned workman was born after 1-7-1922, then the workman shall be given double of full wages for the period of difference i.e. from 1-7-1982 till the date of his attaining the age of 60 years.

This is my award.

N. K. SAHA, Presiding Officer

[No. L-19012/130/86-DIV(B)]

RAJA LAL, Desk Officer

का. आ. 1515:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकॉम सब डिवीजनल अधिकारी, बिजनोर के प्रबन्धन के संबंध में निम्नलिखित श्रमिकों और उनके कर्मचारियों के बीच में अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार 6-5-91 को प्राप्त हुआ था।

New Delhi, the 8th May, 1991

S.O. 1515—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom Sub Divisional Officer, Bijnore and their workmen, which was received by the Central Government on 6-5-1991.

#### ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 72/90

In the matter of dispute between:

Shri Bhajan Singh,  
through Branch Secretary,  
Akhil Bhartiya Tar Yantrik Karamchahi Sangh,  
Linestaff & IVth class Branch, Naohara Bijnore (M.P.)

Versus

Door Sanchar,  
Upmandhya Adhikari,  
Bijnore-Distt. Bijnore-2467001

APPEARANCES : None for the workman,

Shri R.Y. Yadav for the Management.

#### AWARD

The Central Government in the Ministry of Labour vide its Order No.L-40012/126/89-D-2(E) dated 24-11-89 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of Door Sanchar Upamandhya Adhikari, Bijnore in terminating the services of Sh. Bhajan Singh s/o Sh. Ram Chander Singh, daily wages from 30-3-89 is justified? If not to what relief the workman is entitled to?"

3. Nobody appeared on behalf of the workman in spite of notice having been sent by registered A.D. Post to him and his representative. Last and final notice was issued to be sent on 14-1-1991 for 13-2-1991 but none appeared again. Another attempt was made for 27-3-1991 for which another notice was sent to the workman by registered A.D. post but even on that date no one appeared on behalf of the workman. It appears that the workman was not interested in following the matter and since no statement of claim was on record so the question of adjudicating on the dispute, therefore, was not possible. I, therefore, pass a No Dispute award in this case leaving the parties to bear their own costs.

27th March, 1991.

GANPATI SHARMA, Presiding Officer

[No. L-40012/126/89-D-II (B) (Pt.)]

का. आ. 1516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दिल्ली कैंट बोर्ड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-5-91 को प्राप्त हुआ था।

S.O. 1516 — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Delhi Cantt. Board and their workmen, which was received by the Central Government on 6-5-91.

## ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D.No. 132/90

In the matter of dispute between:

National Confederation of Central Government Employees Workers, 52 North Avenue, New Delhi-110001.

Versus

Br. Deputy G.O.C. & Station Commandar, President, Delhi Cantt. Board, Delhi 110010.

APPEARANCES : None

## AWARD

The Central Government in the Ministry of Labour vide its Order No. L-13011/1/90-I.R.(DU) dated 6-11-90 has referred the following industrial dispute to this Tribunal for adjudication

"Whether the demand of the President, National Confederation of Central Govt. Employees & Workers for Hospital Patient Care Allowance in respect of group C & D employees was valid and justified? If yes, to what relief the workmen concerned are entitled to?"

2. In this case notice had been sent by registered post thrice to the workman but none appeared to file the statement of claim. It appears that none on behalf of the workman was interested in following the case. In view of this situation No Dispute award is passed in this case leaving the parties to bear their own costs.

30th April, 1991 GANPATI SHARMA, Presiding Officer [ No. L-13011/1/90IR/(DU) (Pt)]

का. आ. 1517 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिस्ट्रिक्ट मैनेजर, टेलीफोन्स, आगरा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-5-91 को प्राप्त हुआ था।

S.O. 1517—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Distt. Manager Telephones, Agra and their workmen, which was received by the Central Government on 6-5-1991.

## ANNEXURE

BEFORE SHRI GANPATI SAHRMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D.No. 138/88

In the matter of dispute between:

Kumari Rajni Srivastava,  
Smt. Pushpa Maheshwari and  
Kumari Haseen Akhtar  
through Secretary,  
Indian National Trade Union Congress (U.P.)  
2/236, Namner, Agra (U.P.)

Versus

District Manager,  
Telephones,  
C.T.O. Building,  
Agra.

APPEARANCES: Shri Surendera Singh for the workmen.

Shri K.L. Khurhwa for the Management.

## AWARD

The Central Government in the Ministry of Labour vide its order No. L-40011/4/87-D-2(B) dated 7-12-88 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of District Manager, Telephones, Agra in not regularising the services of Kumari Rajni Srivastava, Smt. Pushpa Maheshwari and Kumari Haseen Akhtar as Hindi Typist is justified. If not, to what relief the applicants are entitled."

2. The workmen in their statement of claim have alleged that the workmen were Hindi Typists after having qualified from I.T.I. Agra. They were appointed on daily wages w.e.f. 30-10-80 and then joined on 16-11-80 and were working as Hindi Typists from that date regularly. Thereafter management had been treating the workmen as casual labour though the work of the workmen is that of a permanent nature. The regularisation of the services of the workmen should have been done by the Management because they are regularly working in the department. Hence the Management was not at all justified in not regularising the services of the workmen.

3. The written statement was filed by the Management on the objection that the subject matter was subjudice and pending decision in the Hon'ble High Court in writ petition but they were filing the written statement on the directions of the court. It was alleged in the written statement that the workmen were working as casual labour in the office/project of Telecommunication Department. Only Kumari Rajni Srivastava was called for interview to work as Hindi Typist while Kumar Haseen Akhtar and Pushpa Maheshwari were offered to work as casual workers. All of them accepted the terms and conditions of the appointment and they were paid wages of casual rates as revised from time to time in accordance with the Departmental instructions. They were upgraded to category II. There was a procedure for recruitment to the post of Typist/Clerks in the department against clear vacancies and the candidate was supposed to face the competition/selection and if he was found eligible for the post the appointment was made by the competent authority/board on regular basis. There was no occasion



for the department to appoint them as regular employee because there was no vacancy nor he was the competent authority to do so. The mere fact that the employees were eligible and qualified for appointment to the post of clerk/typist is in no way helpful to them as qualification was only one part of the whole game, the existence of vacancies recruitment through procedure were other factors which have to be taken into consideration. Besides this some legal objections were also taken.

4. The Management in support of its evidence examined Shri Radhey Sham Aggarwal MW1 while all the workmen appeared as Rajni Srivastava WW1, Haseen Akhtar WW2 and Pushpa Maheshwari WW3 as their own witness. I have heard representative for the parties and have gone through the file carefully. It is not disputed that the appointment of all the three workmen were made on daily wages but they were continuing as such in the department. The contention of the representative for the management that daily wages employee could not be regularised in the clerical job unless there was a clear cut vacancy and the procedure for recruitment was followed.

5. The representative for the workman has not been able to show any law on the basis of which these daily paid workers should be absorbed in regular employment of the government merely because they had been working for the long time on daily wages. No law has been shown to me by the representative for the workman on this issue.

6. The telecommunication department is a Government of India department where recruitment as clerks/typists is made by a set procedure. The posts are advertised. The qualified candidates apply and after scrutiny of their applications they are made to appear in a test followed by interview. A merit list is prepared then out of those on merit appointment letters are issued according to the available vacancies. Whole of this procedure cannot be ignored merely because these workmen were working as regular workers with the department earlier. Their experience as such could only be considered by the interview board as and when interview was held. In view of this situation I am of the definite opinion that claim of the workmen was without any basis and the management of the office of the District Manager Telephone Agra was justified in not regularising the services of these workmen. They are entitled to no other relief from this court. Parties are left to bear their own costs.

18th March, 1991.

GANPATI SHARMA, Presiding Officer

[No.L-40011/4/87-D-II(B) (Pt)]

का. आ. 1518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 6-5-91 को प्राप्त प्राप्त हुआ था।

S.O. 1518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the ANNEXURE, in 1358 GI/91—4

the industrial dispute between the employers in relation to the management of C.P.W.D. and their workmen, which was received by the Central Government on 6-5-91.

#### ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 147/89

In the matter of dispute between :

Shri Ram Sajiwan Wireman Gr. II,  
Through Branch Secretary,  
CPWD Mazdoor Union,  
L.E.S.N.A.A. Mansoori

Versus

Chief Engineer,  
North Zone, CPWD E.C.-5,  
East Block, R.K. Puram,  
New Delhi-66.

APPEARANCES : Shri R.P. Goel for the workman.

Shri K.K. Chadha for the Management.

#### AWARD

The Central Government in the Ministry of Labour vide its order No. L-42012/90/87-D-2(B) dated 23-6-99 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of CPWD is not promoting Shri Ram Sajiwan Wireman Grade II after passing the Departmental Trade Test on 2-4-85 and appointing him as Asstt. Wireman on work charged establishment vide Office order dated 17-11-86 is justified. If not, to what relief the workman is entitled to."

2. The case was today fixed for filing of rejoinder by the workman when his representative Sh. R.P. Goel made statement that inspite of repeated reminders to the workman and the union nobody has turned up and it appears that none of them was interested in pursuing the case. He further stated that case may be closed.

3. In view of the above statement of Sh. R.P. Goel and in the absence of any evidence on record there appears to be no dispute existing between the parties or the workman himself is not interested in following the matter in dispute. I, therefore, pass a No. Dispute Award in this case leaving the parties to bear their own costs of these proceedings.

4th March, 1991

GANPATI SHARMA, Presiding Officer

[No. L-42012/90/87-D-II (B) (Pt)]

का. आ. 1519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिस्ट्रिक्ट इंजीनियर, देहरादून के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 6-5-91 को प्राप्त हुआ था।

**S.O. 1519**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom Distt. Engineering Dehradun and their workmen, which was received by the Central Government on 6-5-91.

## ANNEXURE

BEFORE SHRI GANPATI SHARMA: PRESIDING  
OFFICER : CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL : NEW DELHI

I.D. No. 30/90

Shri Triveni Prasad, S/o Sh. Ram Naresh, through Sh. Raj Lala Ram, Truck Station, Telephone Exchange Compound, Dehradun.

Versus

Telecommunication, District Engineer,  
Subhash Road, Dehradun.

APPEARANCES : Workman in person.

None for the Management.

## AWARD

The Central Government in the Ministry of Labour vide its Order No. L-40012/12/88-D-II (B) dated 19-5-89 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Telecommunication District Engineer, Dehradun in terminating the services of Sh. Triveni Prasad S/o Sh. Ram Naresh from 15-8-87 is justified ? If not, to what relief the workman is entitled to ?"

2. In the statement of claim it was alleged that the workman was appointed on daily wages from 1-12-85 and vide letter dated 14-7-87 services of the workman were terminated w.e.f. 15-8-87. No compensation or notice was given to the workman. Hence he was entitled for reinstatement.

3. Notice was sent to the management and only on 23-7-90 Assistant Engineer Telephone had appeared. He was directed to file the affidavit of the Management for evidence. Thereafter nobody appeared on behalf of the management on any other date. Registered notice was also sent to the Management but it did not appear. The workman has filed his affidavit stating therein that he has worked for 599 days continuously and his services were terminated on 15-8-87. He has also stated that his services were terminated without any notice nor any compensation was ever paid to him.

4. I have heard representative for the workman and have gone through the record.

5. From the affidavit of the workman it is amply clear that he has worked for more than 240 days and the management has not come into the witness box or led any evidence to prove the basis of the termination of the services of the workman. The onus was on the management to prove that the termination of his services by the management was justified but that justification has not been in any manner established by the management, as they have failed to appear in the case. I, therefore, am left with no option but to accept the affidavit of workman and order that the termination of the workman was not proved to be justified. It is, therefore, ordered that the workman is reinstated with full back wages from the date of his termination.

GANPATI SHARMA, Presiding Officer

[No. L-40012/12/88-D-II (B) (Pt.)]

**का. आ. 1520** :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विहकल फैक्ट्री जबलपुर के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अतुल्य में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

**S.O. 1520** :— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Vehical Factory Jabalpur and their workmen, which was received by the Central Government on 7-5-91.

## ANNEXURE

BEFORE SHRI V.N. SHUKLA, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC (R) (69)/1985.

## PARTIES:

Employers in relation to the management of Vehicle Factory Jabalpur and their workman, Sri Brijlal, Lab. H. No. 361, Bhajan Ka Bara, Beoharbag, Jabalpur (M.P.)

## APPEARANCES:

For Workman	.. Shri R.C. Srivastava, Advocate.
For Management	.. Shri A.K. Chaube, Advocate.

INDUSTRY: Vehicle Factory (Defence)

DISTRICT: Jabalpur (M.P.)

## AWARD

Dated : April 23rd, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-14012(7)/84-D. II(B) dated 2nd August, 1985, for adjudication of the following dispute :—

"Whether the action of the management of Vehicle Factory, Jabalpur (MP) in dismissing Sri Brijlal Labour 'B' Grade with effect from 11-4-1982 is justified? If not, to what relief the workman concerned is entitled?"

2. Facts leading to this case are that Shri Brijlal was appointed as Labourer Grade 'B' in Vehicle Factory, Jabalpur. He was charge-sheeted as follows and his services were terminated with effect from 11-4-1982 after holding the departmental enquiry.

"That the said Shri Brijlal while functioning as Labourer 'B' Grade is alleged to have committed:-

## ANNEXURE-I

"Gross Misconduct-Attempted theft of government property-Conduct unbecoming of a government servant."

## ANNEXURE-II

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against Shri Brijlal

"That on 18-1-1981 at about 1630 hours the said Brijlal, Labourer 'B' Grade, VFJ T. No. NTM/564/05059 went to Gate No. 3 for going out of the factory. At Gate No. 3 he was sent to search room for search and he was searched by No. 13725869 Sepoy Gyan Chand, 184 DSC Platoon/VFJ in the presence of Shri J.K.D. Mazumdar, and Shri C.V. John, Security Supervisors. It is alleged that on search of the said Shri Brijlal, 6 Nos. of sealed Roller Bearings, the property of the factory, were found concealed in the pockets of his pant and Baniyan, which he was taking out of the factory unauthorisedly. The said Shri Brijlal in his statement dated 18-1-1981 recorded in the presence of the Orderly Officer, had confessed that the above Roller Bearings were taking to home by him for fixing the same in his cycle. The above act on the part of the said Shri Brijlal is highly irregular and subversive of discipline, which amounts to "Gross Misconduct-Attempted theft of government property—Conduct unbecoming of a government servant."

3. The workman challenged the validity of the departmental enquiry, the punishment awarded as also the action taken against him.

4. The management denied the claim of the workman. According to it, his services have been rightly terminated because he was found guilty of the charges proved in the departmental enquiry. The enquiry was held in accordance with law. The punishment is adequate. Reference is liable to be rejected.

5. Following issues were framed by my learned predecessor and my findings are recorded against each of them:—

#### ISSUES

1. Whether the enquiry is proper and legal?
2. Whether the management is entitled to lead evidence before this Tribunal?
3. Whether the punishment awarded is proper and legal?
4. Whether the termination/action taken against the workman is justified on facts of the case?
5. Relief and costs.

Reasons for my findings:—

6. Issues No. 1 & 2:- Vide proceedings dated 18-3-1991 it was held that the departmental enquiry has been properly held and hence the question of granting an opportunity to the management to lead evidence relating to misconduct of the workman does not arise. This Tribunal, however, reserved its order to look into the evidence to find out whether the order is perverse. Issues No. 1 & 2 have been accordingly replied.

7. Issues Nos. 3 to 5:- So far as Issue Nos. 3 to 5 are concerned, I have gone through the D.E. file and the statement of the workman concerned as also the testimony of Gyan Chand C.V. John, J.K.D. Mazumdar. It may be pointed out at the outset that not only from the cross-examination of these witnesses but also from the written statement of the workman to the charge as also his representation dated 23-1-1982 it is evident that the workman had admitted that six Bearings were recovered from his person. But according to him, it was a part of criminal conspiracy and he was not aware that six Bearings were planted by somebody. He thought that it may be Bidi Kattas which are mostly kept in Baniyan Pockets. It was obviously a mockery of defence inasmuch as the Bearings are sufficiently heavy and they cannot be planted inside the pockets of Baniyan even assuming that some of the Bearings were planted in his full Pant etc. Even otherwise also the

fixing cannot be said to be perverse and the workman in the Defence Establishments with such a misconduct cannot be kept in service. He should thank himself that he has not been prosecuted for theft. Hence it cannot be said that the findings are perverse or that the punishment is not proper or the termination/action taken by the management is not justified on the facts of this case.

8. Issues are accordingly answered as follows:—

1. Punishment awarded is proper and legal.
2. Termination/action taken against the workman is justified on the facts of the case.
3. Workman is not entitled to any relief.

9. Reference is accordingly as follows:—

The action of the management of Vehicle Factory, Jabalpur (MP) in dismissing Sri Brijlal Labour 'B' Grade with effect from 11-4-1982 is justified. He is not entitled to any relief. No order as to costs.

V.N. SHUKLA, Presiding Officer  
[No. L-14012/7/84-D. II (B) (Pt.)]

का० आ० 1521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार गवर्नमेंट औद्योगिक एलकेलाड वर्क्स; नीमच के प्रबन्धसूत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबद्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

S.O. 1521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Govt. Opium Alkaloid Works, Neemuch and their workmen, which was received by the Central Government on 7-5-1991.

#### ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE NO. CGIT/LC(R)(62)/1983.

#### PARTIES :

Employers in relation to the management of Government Opium and Alkaloid Works Undertaking, Neemuch (M.P.) and their workman, Shri Ijak Kishan S/o Mohan Kishan, Bhola Ram Compound, Neemuch (M.P.).

#### APPEARANCES :

For workman—Shri Rajmani Jain, Advocate.

For management—Shri B. G. Nema, Advocate.

INDUSTRY : Opium & Alkaloid Works—

DISTRICT : Neemuch (M.P.).

### AWARD

Dated : April 23, 1991.

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-42012(26)/83-D.II(B) Dated 5th December, 1983, for adjudication of the following dispute :—

"Whether the action of the management of Government Opium Alkaloid Works Undertaking in relation to General Manager, Neemuch in terminating the services of Shri Ijak Kishan S/o Mohan Kishan casual worker with effect from 22-10-1982 is justified? If not, to what relief is the workman entitled?"

2. Shri Ijak Kishan was employed with the management and his services were terminated.

3. According to the workman he was working as a confirmed Electrician. First he worked from 1st August, 1979 to 26th March, 1980, thereafter from 1-10-1980 to 25th May, 1981, then from 1-6-81 to 21-1-1982 and 4-3-1982 to 22-10-1982. He was terminated from service with effect from 22-10-1982. The order of termination is bad in law and breaks were artificial. He had completed more than one year continuous service. After his services were terminated another workman was employed in his place in violation of the provisions of Sec. 25H of the I.D. Act. He is, therefore, entitled to be reinstated with all back wages and consequential benefits.

4. According to the management, the workman was employed as a Casual Worker from 4-3-1982 to 22-10-1982 (233 working days). During the period of employment as casual worker he was paid daily wages/fixed monthly rate of pay as approved by the Collector, Mandsaur. He was not working as a Casual Electrician but was working as a Casual Worker. No notice was therefore required for his termination. He had not completed one year's continuous service. He is not entitled to any relief whatsoever. Because he was not qualified for the Technician Grade II (Electrical Trade), he was not called for interview held in October, 1982. It is a higher post of Group C. No person was employed in his place. Reference is liable to be rejected.

5. My learned predecessor vide award dated 30th July, 1984 rejected the reference holding that the order of termination of the workman is justified. This award was set aside by the High Court of M.P. The case proceeded ex-parte. My learned predecessor vide order dated 30th April, 1986 refused to set aside the ex-parte proceedings. This order was set aside by the High Court in M.P. No. 560/87 vide order dated 25-8-1988 and directed this Tribunal to dispose of this case within six months. Old drawn case proceeded and was fixed on 1-2-1991 on which date nobody appeared. Case was fixed on 4-2-1991 but the management did not appear and the case proceed-

ed ex-parte against the management. Evidence was recorded and the case was fixed for award.

6. On 25-2-1991 an application for setting aside the order was received along with the copy of a telegram and affidavit. The grounds are patently unacceptable because there is no clear indication as to what were those urgent administrative reasons on account of which the management could not appear on the fixed date. This is an old drawn case and there is no justifiable ground for setting aside the order. The High Court had also directed that the case should be disposed of within six months and if in these circumstances the management chooses to remain absent on administrative grounds it may please to do so. The application for setting aside the ex-parte order is accordingly rejected.

7. Now coming to the evidence on record of this case, I must point out that the workman has died on 15-11-1987 and as per direction of the High Court case has proceeded.

8. Workman has examined his wife, Smt. Shashi as W.W.1 and R. K. Pathak as W.W.2. They have also proved documents Ex. W/1 to Ex. W/5 and Ex. M/1. These documents have been proved in the evidence of M.W. 1, B. K. Rangnekar. These documents disclose that the workman had worked as follows :—

1. 1-9-1979 to 26th March, 1980 (Ex. W/3).
2. 1-10-1980 to 25-5-1981 (Ex. W/4).
3. 1-6-1981 to 21-1-1982 (Ex. W/1)
4. 4-3-1982 to 22-10-1982 (Ex. W/2).

It goes without saying that the breaks were artificial and the workman had completed one year's continuous service preceding to the date of termination (See Mohan Lal vs. The Management of M/s. Bharat Electronics Ltd. AIR 1981 SC 1253). Even M.W. 1, Bulkishna Rangnekar admitted that from October 1980 to 1982 the workman had worked for more than 240 days in a year. Thus his services could not be terminated without retrenchment notice and compensation as required by Sec. 25F of the I.D. Act. That apart, as per W.W. 2 R. K. Pathak, Brajesh Upadhyay and Govind Singh Yadav were appointed after the termination of service of the workman concerned. Thus the termination order of the workman is void ab initio and is liable to set aside (See State Bank of India Vs. N. Sunderamoney AIR 1976 SC p. 1111). Therefore the workman was entitled to reinstatement with back wages and consequential benefits. But this benefit can be extended upto 15-11-1987. Reference is accordingly answered as follows :—

The action of the management of Government Opium Alkaloid Works Undertaking in relation to General Manager, Neemuch in terminating the services of Shri Ijak Kishan S/o Mohan Kishan casual worker with effect from 22-10-1982 is not justified. He is entitled to be reinstated with full back wages and all ancillary benefits. But since the workman has died

the benefits be extended upto 15-11-1987 only. No order as to costs.

V. N. SHOKLA, Presiding Officer  
[N. L-42012|26|83-D.II(B)(Pt.)]

का. आ 1522 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पी व टी डिपार्टमेंट एक्सिजल मैनटेनेन्स के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

S.O. 1522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of P&T Deptt (Co-axial Maintenance) and their workmen, which was received by the Central Government on 7-5-91.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M. P.)

CASE NO. CGIT|LC (R)( 167)|1987.

#### PARTIES :

Employers in relation to the management of Post & Telegraphs Deptt (Co-axial Maintenance) Pandharkooda, District Yeotmal (MS) and their workman Shri Ashok Pandurang Parejwar, Ex-Jeep Driver, Ro Gandhiward, Pandharkawada, Tal : Kelapur, District : Yeotmal (MS).

#### APPEARANCES :

For Workman ...Shri K. V. Barhate,  
Advocate.

For Managment ...Shri B. W. Thamke.

#### INDUSTRY :

Post & Telegraphs. DISTRICT : Yeotmal (MS)  
AWARD

Dated : April 24, 1991.

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-40012|38|86-D. II(B) Dated 2-9-1987 for adjudication of the following dispute:—

“Whether the action of the management of Post & Telegraph Department (Co-axial Maintenance) Pandharkooda, Distt. Yeotmal (MS) in terminating Shri Ashok Pandurang Parejwar ex-Jeep Driver from service w.e.f.

13-5-1986 is legal justified ? If not, to what relief is the concerned workman entitled ?”

2. Facts leading to this case are that the workman was employed as a Motor Driver on daily wages basis at Rs. 10/- per day with effect from 1-6-1979. He continued in service till 30-4-1981. He met with an accident on 30-4-1981, was admitted in hospital and treated. He reported after obtaining fitness certificate on 8-9-1981, but his services had stood already terminated. A reference was made and this Court in CGIT|IC(R) (31)|1984 vide order dated 13-11-1984 held that the termination of service of the workman was void and he was directed to be reinstated with full back wages. He had also moved Labour Court, Nagpur for reinstatement and back wages and a Cheque amounting to Rs. 18,350/- was issued to him. He was asked to resume duties vide letter No. NP|CXL|E-26|86-87|102 dated 1-5-1986. He resumed duty on 7-5-1986 but his services were terminated vide letter No. DISP|APP|86-87 dated 13-5-87 on the ground that there is no vacancy for the applicant. He was offered retrenchment compensation and notice pay but was not accepted by the workman. The matter is said to have been taken up to the High Court also and the award of this Tribunal was ultimately maintained. It is against the second order of termination dated 13-5-1986 that this reference has been made.

3. According to the workman, the management has not complied with the orders of the Tribunal by not paying him the full back wages before his services were terminated. He was entitled to be paid at least at the rate provided under the Minimum Wages Act along with D. A. The provisions of Sec. 25F of the I. D. Act have not been followed. The compensation and one month's pay in lieu of notice were not paid to him at the rate to which he was entitled. Though he was appointed on daily wages of Rs. 10/- per day wage rate increased from time to time and non-payment at the increased rate is violative of provisions of Sec. 25F of the I. D. Act.

4. The workman having served for more than seven years was entitled to be appointed on regular basis as per orders of the management and the practice followed by them and his wages should have been fixed accordingly. Without fixing his wages the services of the workman could not have been terminated in accordance with Sec. 25F of the I. D. Act.

5. Provisions of Sec. 25G of the I. D. Act has also not been followed. Many persons have been appointed subsequent to his appointment and if retrenchment was to be made the workman should have been the last person on the principle of 'last come first go'. Management having been annoyed with the reinstatement of the workman as per orders of the Court, in order to eye wash the order of the Court, he was given the job for seven days and thereafter his services were terminated. One Ambhore was appointed after his services were terminated in violation of the provisions of Sec. 25G of the I. D. Act. It amounts to victimisation and unfair labour practice. The workman was appointed against the permanent post. It was never brought to his notice that his appointment was against reserved vacancy. He is accordingly entitled to be reinstated with full back wages and consequential benefits.

6. Management says that he was daily rated worker. He was not sponsored from the Employment Exchange. He was not appointed against any permanent vacancy. The sanction was received only in August 1984 after the regular incumbent Shri A. J. Ambhore was posted as a regular Motor Driver on 28-2-1984 by the competent authority i.e. D. E. T. Amravati. The post was reserved for Scheduled Caste candidate.

7. The workman worked from 1-6-1979 to 20-4-81 as casual Motor Driver only. Hence he was not intimated as to whether there was any reserved vacancy or not. No post was sanctioned at that time. The departmental vehicle MTE 2748 met with an accident on 30-4-1981 near village Pimpri. The vehicle was under major repairs and was then diverted to other station before it finally reached Pandharkawada on 13-8-82. The workman was therefore not taken on duty as casual Motor Driver on 8-9-1981 due to non-availability of the work of casual Motor Driver on the Coaxial Station Pandharkawada. Since the basis of his appointment was a casual motor driver he was not entitled to any wages for no work. The question of entertaining the Medical Certificate by the Civil Surgeon for grant of leave does not arise. The back wages have been fully paid. The delay was because the matter was pending before the High Court which was ultimately disposed of on 13-9-85 upholding the judgment of this Tribunal. Certified copy of the order of High Court was received on 29-3-1986. Immediately after the receipt of the certified copy of the order of High Court the workman was directed to join duty. He was sanctioned payment of Rs. 18,350/- plus Rs. 100/- as costs of the case. The delay in issuing the reinstatement order and sanctioned of payment of back wages was due to the pending writ petition in Nagpur High Court and obtaining certified copy of the order.

8. The services of the workmen were terminated after offering compensation amounting to Rs. 589/- as one month's pay in lieu of notice and Rs. 1012.50 as retrenchment compensation on the average basis and five days wages from 7-5-86 to 13-5-86, but the money orders which were sent to the applicant were refused by him. The amount of Rs. 18,350/- from 1-5-81 to 30-4-86 as full back wages and costs at the rate of Rs. 10/- per day for 1825 working days has been calculated by the G.M.M., W.T.R., Bombay Office and deposited before the High Court at Nagpur as per award of this Tribunal. No violation of any of the provisions of the I.D. Act have been made. His termination is valid and legal and has been made in accordance with law. His services could be terminated at any time. The reference is liable to be rejected.

9. Parties have filed their respective rejoinder further clarifying and reiterating their respective cases. Reference was the issue in this case.

10. At the outset it may be pointed out that we should not go behind the judgment of this Tribunal passed on 13th November, 1984 and facts enumerated therein.

11. The workman as W.W.1 has admitted in para 1 of his deposition that he joined on 7-5-1986 and has received all back wages. Thus so far the question of receiving of back wages is concerned the workman has received all the back wages and there is no dispute so far as back wages are concerned.

12. Now the only question that remains to be considered is whether the termination order dated 13-5-1986 is legal and

justified. Ex.W/2 is said to be the termination order dated 13-5-86. According to this order one Shri Ambhore has been appointed against the regular vacancy. No vacancy or work is available for him at Pandharkawada as a driver. Hence his services are no more required and are terminated with effect from 13-5-1986. He was offered a month's salary amounting to Rs. 589/- in lieu of notice of retrenchment along with retrenchment compensation equivalent to 15 days average wages from 1-6-79 to 13-5-86 amounting to Rs. 1012.50. It is also not disputed that this payment was refused by the workman and the management has filed the returned money order (Ex.M/1).

13. Now the question is whether after complying the orders of the Tribunal the services of the workman could be terminated in the manner they have been terminated by the management. For this purpose we have to revert back to the award itself. The operative part of the award runs as thus :—

"I, therefore, order that the Department shall reinstate the workman and pay him all the back wages. If they want to terminate his services, they will have to do so in accordance with the provisions of the Act. The workman is entitled to Rs. 100/- as costs."

14. At page 3 of the award last paragraph last sentence my predecessor has observed as follows :—

"Such a retrenchment without payment of compensation and other requirements of section 25-F would be void ab initio."

My predecessor has observed in the next para as follows :—

"It is argued that since he had not renewed his driving licence, he cannot be retained in service. No inquiry had been instituted nor any finding arrived at in any domestic inquiry that he could not carry on the work of a driver. There is no finding except the mere word of the Department that he had not renewed his licence. If the Department wanted to terminate his services of such a person without payment of retrenchment compensation, the other method to do so was to hold a domestic inquiry after giving him a proper charge-sheet. Since this has not been done, the termination amounted to retrenchment and the consequences that follow retrenchment under the law, must take their course. Once the workman, no matter he had been a casual worker, had rendered service for 240 days in a year, he was entitled to the benefits provided under section 25-F of the Act. The Section is mandatory and enjoins that no workman employed in any industry who has been in continuous service for not less than one year and an employer, shall be retrenched by the employer until the conditions provided in that section are satisfied. I have, therefore, no hesitation in holding that the retrenchment of the workman was void."

15. From these observations of the award it can be well gathered that my predecessor meant that because according to the management the workman had not renewed his driving licence he could not be retained in service. In this context my learned predecessor observed that the enquiry should have been made in this regard and his services should have been terminated in accordance with law. This is what is the substance of the meaning of the operative part of the award.

16. The management mischievously misconstrued the award and by appointing him for few days i.e. for seven days from 7-5-86 to 13-5-86 gave him a go by by giving retrenchment compensation etc. This was not what my learned predecessor meant. The workman was working since 6-1979 and whom domestic enquiry, because he had no valid licence his

services were terminated all of a sudden on 30-4-1981. His services were deemed to be continued right from 1-6-1979 till 13-5-1986 because not only as per Award retrenchment of the workman with effect from 8-9-1981 was void ab initio which follows that it was not an order of retrenchment in the eye of law and the workman should be deemed to be in continuous service and this fact also finds confirmation from the termination order Ex.W/2 because his services have been taken into account from 1-6-1979. Thus the management was very clear in its mind that the retrenchment from 30-4-1981 was void ab initio and his services would be deemed to be continued from 1-6-79. Another fact which has to be noted is that as per observations in the award dated 13-11-84 my learned predecessor has held that the workman was working against the permanent post. If all these facts are considered together and in view of the fact that this retrenchment from 8-9-1981 was void ab initio he should have been given preference over the subsequent incumbent because not considering his case on priority basis it amounted to violation of the provisions of Sec. 25G of the I.D. Act.

17. While drawing conclusion I must put forth the fact as follows :—

- (1) The workman was in continuous service from 1-6-1979 to 13-5-1986.
- (2) Though he was a casual daily rated employee but he was working against a permanent post.
- (3) After his services were illegally retrenched with effect from 8-9-1981 another man viz. A.J. Ambhore was employed on the said post.
- (4) Obviously it was an eye wash to the award of my learned predecessor, management gave him employment for seven days and retrenched him thereafter. This is nothing short of victimisation of the workman.

18. Considering all the facts and circumstances of this case the termination order of the workman dated 13-5-1986 is neither legal nor justified. Looking to his long service he should have been considered for regularisation and absorption against the permanent post but instead he was given a wooden stick in his mouth after a long drawn litigation and sufferings.

19. The reference is, therefore, answered as under :—

The action of the management of Post & Telegraph Department (Co-axial Maintenance) Pandharkoda, District Yeotmal (MS) in terminating Shri Ashok Pandurang Parejwar ex-Jeep Driver from service w.e.f. 13-5-86 is neither legal nor justified. He is entitled to reinstatement with full back wages and all ancillary benefits and Rs. 2000/- as costs. Award is made accordingly.

V.N. SHUKLA, Presiding Officer  
[No. L-40012/38/86-DII(B)(Pt.)]

का.प्र. 1523.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार अधिनेन्स फौज्दी, खमरिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वय में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचयट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

S.O. 1523.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Ordnance Factory, Khamaria and their workmen, which was received by the Central Government on 7-5-91.

#### ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(130)/1988

#### PARTIES :

Employers in relation to the management of Ordnance Factory, Khamaria, Jabalpur and their workman Shri Veenkat Ganpat, Over Looker C/o Dr. Raghunath Sabi, Vehicle Factory Road, Ranjhi, Jabalpur (M.P.).

#### APPEARANCES :

For Workman.—Shri R. Menon, Advocate.

For Management.—Shri S. S. Jha, Advocate.

INDUSTRY : Ordnance Factory

DISTRICT : Jabalpur (M.P.)

#### AWARD

Dated the 24th April, 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-13012/3/83-D. II(B) dated Nil. for adjudication of the following dispute :—

“Whether the action of the management of Ordnance Factory, Khamaria, Jabalpur (MP) in dismissing Shri Veenkat, Over Looker w.e.f. 31-12-79 is justified? If not to what relief is the workman concerned is entitled to?”

2. Parties filed their respective statement of claim. Applicant workman had also filed an application dated 2-2-89 praying for an interim award. A number of adjournment was sought by the workman to file a modified reference order but he could not do so.

3. On 24-4-1991 Counsel for the workman admitted that dismissal order of the workman has duly been set aside and the workman has been compulsorily retired.

4. Therefore in view of the dismissal order having been set aside by the Appellate Authority, the reference has become infructuous. If the workman wants to challenge the order of compulsory retirement, he can come by way of a fresh reference.

5. In the circumstances, the present reference has become infructuous. Award is made accordingly. No order as to costs.

V. N. SHUKLA, Presiding Officer  
[No. L-13012/3/83-D. II(B) (Pt.)]

का.सा. 1524.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गवर्नमेन्ट ऑपियम एवं एल्केल(एड वर्कस, नीमच के प्रबन्धतंत्र के संबंध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-91 को प्राप्त हुआ था।

S.O. 1524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabapur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Government Opium and Alkaloid Works, Neemuch and their workmen, which was received by the Central Government on 7-5-91.

#### ANNEXURE

BEFORE SHRI V. N. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(28)/1984

#### PARTIES :

Employers in relation to the management of Government Opium & Alkaloid Works Undertakings Neemuch (M.P.) and their workman, Shri Santosh Kumar Gehalot, Technician Grade II. S/o Shri Mohanlal Gehalot, House No. 136, Naya Bazar, Neemuch Cantonment (M.P.).

#### APPEARANCES :

For Workman.—Shri Rajmani Jain, Advocate.

For Management.—Shri B. G. Nema, Advocate.

INDUSTRY : Opium & Alkaloid Works

DISTRICT : Neemuch (M.P.)

#### AWARD

Dated the 23rd April 1991

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-42012 (56)/82-D. II(B) dated 11th April, 1984, for adjudication of the following dispute :—

“Whether the action of the management of Govt. Opium and Alkaloid Works Undertaking, Neemuch in terminating the services of Shri Santosh Kumar Gehalot, Technician Grade II, with effect from 20-7-81, without issue of charge sheet and without conducting a domestic enquiry is justified? If not, to what relief is the workman entitled?”

2. Shri Santosh Kumar Gehalot, Technician Grade II of the Government Opium and Alkaloid Works Undertaking, Neemuch, was terminated from service with effect from 20-7-1981 without issue of charge-sheet and without conducting a domestic enquiry.

3. The workman says that he was working as Technician Grade II with effect from 1-10-1975. Prior to this he was a Peon under the Deputy Narcotics Commissioner, Neemuch for a period from 3-7-1971 to 30-9-1975. His services were wrongly and illegally terminated on 20-7-1981. He was not paid any re-trenchment compensation. Principle of last come first go and notice in Form P etc. were also not given. He was not a temporary workman. He was wrongfully suspended with effect from 24-10-1978 on the basis of false prosecution by Neemuch Police under Sec. 363, 452 and 506 of the I.P.C. Management has falsely implicated him and suspension was motivated. It is wrong that he assaulted Shri A. L. Modiratta in the office chamber of the Production Manager. It is false that Shri R. K. Pathak also assaulted him. The report made by him is false. He was acquitted on the criminal charge and was liable to be reinstated. That apart, he was also arrested on the basis of false information given to the Police by Neemuch. He never remained underground. He was not involved in any offence. The order of termination is order of termination simpliciter. He is entitled to reinstatement with full back wages and all consequential benefits.

4. Management says that the workman was appointed as Worker Category II with effect from 1-10-75. His services were legally terminated under Rule 5(1) of the C.C.S. (Temporary Services) Rules, 1965 with effect from 20-7-1981. He was also ordered to be paid one month's wages in lieu of notice period. He was placed under suspension with effect from 24-10-78 because he was prosecuted by Neemuch Police under Sec. 353, 452 and 506 I.P.C. He was not falsely implicated nor the order of suspension was motivated. On 23-10-1978 while the workman was on duty along with one Shri R. K. Pathak, they assaulted Shri A. L. Modiratta in the office chamber of the Production Manager. A report was made. Shri Gehalot and Shri Pathak were arrested by the police and criminal prosecution were started against them. The delinquent was, however, acquitted by the Additional Chief Judicial Magistrate on 3-8-1982.

5. On 12/13-5-1981 the Central Bureau of Narcotics staff seized 21.250 Kg. of S.R. Crude Morphine from the residence of one Shri Abdul Latif. Neemuch Police subsequently took over the above case, issued a warrant of arrest against Shri Gehalot who was also a suspect in the above case. Shri Gehalot had gone underground. In view of his above involvement in criminal case his services were terminated in the public interest. Though he was discharged in the Neemuch case an appeal is pending and the matter is subjudice. Hence it was not necessary for the management to issue a charge-sheet and conduct an enquiry. The order of termination is valid and the reference is liable to be rejected.

6. The case continued onwards from 18-6-84. On 1-2-1991 nobody appeared. The case was then posted for 4-2-1991. On this date also the management absented and the case proceeded ex-parte against the management.

7. It appears from the record that one application dated 21-2-1991 was sent to this Tribunal along with an affidavit and photo copy of telegram by the management. The application is unsigned and therefore



it cannot be considered. This application however is for setting aside the ex parte order. Thus the application is no application in the eyes of law and has to be ignored, or rejected.

8. Now coming to the evidence on record the workman has proved documents Ex. W/1 to Ex. W/6 and has examined him self in support of his case. The workman had worked for substantially long period and whether he was temporary or permanent his services could not be terminated except by way of departmental enquiry or the workman was convicted by the competent Court after due notice to him. Ex. W/5 is the order of Sessions Judge, Mand aur according to which the workman was discharged for offence under Sec. (4), (8) read with Sub-section 14 and 21 of the Dangerous Drugs Act. As per Ex. W/6 the workman was acquitted of the charges under Sec. 452, 353 and 506 of I.P.C. Having discharged and acquitted in the respective offences he could not be terminated from service.

9. If the appeal was pending they should have waited for the result of the appeal, but there is nothing on record to show that any such appeal is pending.

10. Even if the workman was discharged and acquitted in the respective case management was competent enough to hold D.E. against the workman concerned in relation to this misconduct which call for indulgence of the management. Certainly if the workman is of the type as was charge-sheeted he does not deserve to be kept in service but that should have been proved either by D.E. or by the competent Court of law and should have been punished in accordance with law.

11. The same having not been done the order of termination is liable to be set aside but in particular circumstances of this case I direct the department to hold a domestic enquiry against the workman concerned and take suitable action in the matter. With this observation I set aside the order of termination and direct that the workman shall be deemed to be in continuous service with all back wages, but no consequential benefits. It has to be kept in mind that he was under suspension for certain period and so far the wages of that suspension period are concerned they should be given in accordance with law if departmental enquiries are held against the workman concerned. Award is made accordingly. No order as to costs.

V. N. SHUKLA, Presiding Officer

[No. L-42012/56/82-D. II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

नई दिल्ली, 8 मई, 1991

का. आ.1525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33क के अंतर्गत सेंट्रल बेयर हाऊसिंग कॉर्पोरेशन के प्रबन्धन के विरुद्ध धायर एक प्रार्थना पत्र के संबंध में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो कि केन्द्रीय सरकार को 6-6-91 को प्राप्त हुआ ।

1358 GI/91—5

New Delhi, the 8th May, 1991

S.O. 1525.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal New Delhi, as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Central Warehousing Corpn. and their workmen, which was received by the Central Government on the 6-5-1991.

#### ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESID-  
ING OFFICER : CENTRAL GOVT. INDUSTRIAL  
TRIBUNAL : NEW DELHI

I.D. No. 38/90

In the matter of dispute between :

Shri Rajinder Kumar s/o Shri Neemchand,  
through Shri Abdul Aziz, Organising Secre-  
tary, Central Warehousing Corporation  
Employees Union, U.P. Unit, Central Ware  
House, Janta Road, Saharanpur-247001.

Versus

Regional Manager, Central Warehousing Cor-  
poration, 126/14, V. N. Road, Lalbagh,  
Lucknow-226003.

#### APPEARANCES :

Shri R. P. Goel—for the workman.

Shri Kul Bhushan—for the Management.

#### AWARD

The Central Government in the Ministry of Lab-  
our vide its Order No. L-42012/7/89-I.R. (Vividh)  
dated 26-3-1990 has referred the following industrial  
dispute to this Tribunal for adjudication :

"Whether the action of the management of  
Central Warehousing Corporation Regional  
Office, Lucknow in terminating the services  
of Shri Rajinder Kumar s/o Shri Neem-  
chand, Labourer w.e.f. 16-4-1989 is justi-  
fied ? If not, what relief is the workman en-  
titled to ?"

2. The case was fixed for the settlement of the  
matter by the parties and the parties have settled the  
matter and made statement that according to copy of  
the settlement Ex. M1 the matter has been settled and  
the parties shall remain bound by the term of settle-  
ment Ex. M1. In view of the statements of the  
parties and the settlement Ex. M1 the matter is settled  
and Ex. M1 shall be read as part of this award. Par-  
ties are left to bear their own costs.

16th April, 1991.

GANPATI SHARMA, Presiding Officer

[No. L-42012/7/89-IR(MISC)]

MEMORANDUM OF SETTLEMENT REACHED  
BETWEEN THE REPRESENTATIVES MANA-  
GEMENT AND WORKMAN ON 15-4-1991

**Representing Employer :**

Personnel Manager, CNC, New Delhi.

**Representing Workman :**

Shri Rajaishwar P. Goyle, authorised representative of Shri Rajendra Kumar.

**Short Recital of the Case**

An industrial dispute was raised by Shri Rajendra Kumar, ex-daily rated casual labour, CW, Saharanpur before the ALC(C) Dehra Dun. During discussion, efforts were made to resolve the dispute but it was ultimately referred to adjudication before the CGIT, New Delhi. The negotiation/discussion continued with the Workman, the Union leaders, and the authorised representative of the Workman. As a result of these discussions, a settlement has been reached between both the parties in an amicable atmosphere and with free-will.

**Terms of Settlement**

1. That the Management agrees to offer Sh. Rajendra Kumar, ex-daily rated casual labour the appointment of Chowkidar on regular basis with the posting at Saharanpur within fifteen days of the settlement.
2. That the Workman agrees to forego the claim of back wages for the intervening period w.e.f. 16-4-1989 till his joining of duties in pursuance of this Settlement, which will be treated as dies non for the purpose.
3. That it is also agreed that in case the Workman has not been paid the minimum rates of wages as fixed by the Labour Department, Government of U.P. from time to time during the earlier period before disengagement on 16-4-1989, he will be entitled to the difference if any, between the minimum wages and wages actually paid.
4. That the benefits which had been extended to other Group D daily rated workers of the Corporation during the relevant period will also be extended to Shri Rajendra Kumar as per eligibility, if not already done.

Dated New Delhi, This 15th day of April, 1991.  
 Representing Workman Sd/-  
 (Rajaishwar P. Goyle)  
 Authorised Representative  
 Representing Employer Sd/-  
 (Kashmir Singh)  
 Personnel Manager  
 CWC

**Witnesses :**

1. Sd/- Illegible.
  2. (B. R. Rangra)
- Dy. Mgr. (Pers) CWC New Delhi

का.आ. 1526.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33क के अंतर्गत सैन्ट्रल वेयर हाऊसिंग कॉर्पोरेशन के प्रबन्धन के विरुद्ध द्वारा दायर एक प्रार्थना पत्र के संबंध में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो कि केन्द्रीय सरकार को 6-5-91 प्राप्त हुआ ।

S.O. 1526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the following award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Warehousing Corpn. and their workmen, which was received by the Central Government on 6-5-1991.

**ANNEXURE**

**BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI**

I.D. No. 11/89

In the matter of dispute between :

Shri D. C. Aggarwal, through The General Secretary, Central Warehousing Corporation Employees Congress, Warehousing Bhawan, 4/1 Siri Institutional Area, Hauz Khas, New Delhi-110016.

Versus

The Managing Director, Central Warehousing Corporation, Warehousing Bhawan, 4/1 Siri Institutional Area, Hauz Khas, New Delhi-16.

**APPEARANCES :**

Shri D. C. Aggarwal the workman in person.  
 Shri Kul Bhushan for the Management.

**AWARD**

The Central Government in the Ministry of Labour vide its Order No. L-42012/147/87-D.II(B)/D.III(B) dated 17-1-1989 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Central Warehousing Corporation, New Delhi in not stepping up the pay of Shri D. C. Aggarwal, Warehouse Asstt. (Gr. I) to make it at par with that of Shri Subhash Talwar, Warehouse Asstt. (Gr. I) (who is reported to be junior to him) is justified. If not, what relief is Shri D. C. Aggarwal entitled to?"

2. In this case the parties have made statement vide which they have settled the dispute. According to settlement Ex. M1, the Management has agreed to refix the pay of Shri D. C. Aggarwal as WA-II at par with Subhash Talwar as WA-II w.e.f. 1-1-1974 with all consequential benefits on account of his refixation of pay w.e.f. the said date. This settlement disposes off the entire dispute. I. therefore, order that Ex. M1 may be read as part of the award and the matter stand settled between the parties. They are left to bear their own costs of the case.

30th April, 1991.

GANPATI SHARMA, Presiding Officer  
 [No. L-42013/147/87-D.II(B)/D.III(B)]

**MEMORANDUM OF SETTLEMENT BETWEEN THE REPRESENTATIVES OF CWC WORKERS UNION (H.O. & N.Z.) AND CENTRAL WAREHOUSING CORPORATION ON 30-4-1991**

Name of Parties :

Representing Employer :

Shri B. B. Pattanaik, Personnel Manager, Central Warehousing Corporation, New Delhi.

Representing workman :

Shri K. K. Prashar, Regional Secretary, CWC Workers Union (H.O. & N.Z.) New Delhi.

**SHORT RECITAL OF THE CASE**

A dispute was raised by the CWC Employees Congress which was later on taken up by CW Workers Union (NR & HO), New Delhi, over the question of parity in pay if Shri D. C. Aggarwal with that of his junior, Shri Subhash Talwar while working as WA-II. This dispute has been amicably settled with the terms.

**TERMS OF SETTLEMENT**

1. That the Management agrees to re-fix the pay of Shri D. C. Aggarwal as WA-II at par with that of Shri Subhash Talwar as WA-II w.e.f. 1-1-1974 with all consequential benefits on account of re-fixation of his pay w.e.f. 1-1-74 onwards.

2. That the workman agrees to the above terms of settlement towards full and final settlement of his industrial dispute pending before the Hon'ble Industrial Tribunal, New Delhi.

Dated, New Delhi, this 30th day of April 1991.

Representing Workman                      Representing Employer  
Sd/- illegible.                                      Sd/- illegible

**WITNESSES :**

1. B. R. Rangra DM(Pers).
2. Sat Pal Dubey

नई दिल्ली, 9 मई, 1991

का.प्र. 1527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33क के अंतर्गत मै. भारत पेट्रोलियम कार्पोरेशन लि., (रिफा इनरी) बम्बई के प्रबन्धन के विरुद्ध दायर एक प्रार्थना पत्र के संबंध में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 1 बम्बई के पंचपट भाग II को प्रकाशित करती है, जो कि केन्द्रीय सरकार को 8-5-91 को प्राप्त हुआ।

New Delhi, the 9th May, 1991

S.O. 1527.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Part II of the Central Government Industrial Tribunal No. 1 Bombay as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. (Refinery) Bombay and their workmen, which was received by the Central Government on the 8-5-1991.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY (PRESIDING OFFICER : JUSTICE S. N. KHATRI)**

Reference No. CGIT-37 of 1988

**PARTIES :**

Employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. (Refinery), Bombay.

**AND**

Their Workmen.

**APPEARANCES :**

For the Management.—Shri Palshikar, Advocate.

For the Workmen.—Ms. Agnes, Advocate.

**INDUSTRY : Petroleum                      STATE : Maharashtra**  
Bombay, the 1st May, 1991

**AWARD  
(PART II)**

13. I have heard Shri Palshikar for the Management and the Workman on merits of the case. The learned counsel of both sides have filed synopses of their submissions also.

14. The first question is whether the finding of the Enquiry Officer as confirmed by the Disciplinary Authority is correct, that on the night of 8-6-1981 the Workman was found asleep while on duty on two occasions, first by Shri Alurkar at 1.30 a.m. and thereafter by Havaldar Pilankar at 4.30 a.m. The Management have cross-examined Alurkar, Havaldar Nathuram Pilankar and Todkar (Co-watchmen of the Workman). Alurkar deposes to his visit at about 00.45 past mid-night. He was affirm that both watchmen (The Workman and Todkar) were found sleeping by him and they did not respond at all and stood like statues when he asked them why they were sleeping. The Officer apprised the Havaldar of the incident. Pilankar made two rounds thereafter at 2 and 4.30 a.m. On the first occasion both watchmen were doing their job alright. On the second occasion however, he found that present Workman sleeping on the ground. Todkar has not supported the Management's case at all. So his evidence will have to be ignored.

15. Both Alurkar and Pilankar have stood the test of cross-examination well. The Workman has no grievance against Alurkar, although he said that he had some row with Havaldar Pilankar on some previous occasions. Pilankar however denies this allegation against him, and Security Officer Kothare has stated that the Workman has never made any grievance against the Havaldar. I have no hesitation to accept the testimony of both Alurkar and Pilankar as true.

16. There is good corroboration forthcoming to the evidence of these two officials from the documents also. Alurkar had made an entry in the log

book immediately after the incident. So also Pilankar had reported the matter to the Security Officer Kothare in writing. To cap this all, there is a letter dated 10-6-1981 addressed by the Workman to the Security Officer, where he had admitted that on both occasions he was found asleep while on duty. He had prayed for mercy on the ground that he was not keeping well on that night and was running temperature.

17. The Workman has no doubt alleged that the letter was obtained from him by Kothare by giving him a threat that he would not allow him to resume duty, unless the former gave the aforesaid letter. Kothare has denied to have exercised any such pressure on the Workman. I see no reason whatever why Kothare should be interested in securing a false confession from the Workman and bring pressure on him for that purpose. The oral evidence of Alurkar and Pilankar receives valuable corroboration from the documents referred to above.

18. There is thus adequate reliable evidence on record to uphold the finding of the Enquiry Officer, and I do accordingly.

19. The next question is whether the fact that the Workman was found asleep on two occasions during the same night constitute an act subversive of discipline. It is not denied that the Workman's duty was to watch the Petrol Installation during the night and ensure its safety. Going to sleep while performing such duty would obviously amount to an act subversive of discipline. I do not think any elaborate reasoning is necessary to reach this finding.

20. The crux of the question raised by the Workman is a bit different. He points out that S.O. 28(k) provides that a Workman may be warned or censured for a idling or sleeping on duty, and urges that when there is specific provision to this effect in S.O. 28(k), it is not open to the Management to say that the same act amounts to a more serious misconduct as contemplated by S.O. 26(1). Shri Palshikar for the Management points out that while the opening part of S.O. 26 provides "The following acts and/or omissions on the part of a Workman shall amount to misconduct", S.O. 28 says "A Workman may be warned or censured, for any of the following acts and/or omissions". Thus this stress is on the use of the word 'shall' and 'may' in the two provisions. According to him, the Tribunal is bound to treat the act of the Workman as misconduct under S.O. 26(1) and not merely as an ordinary misdemeanour under S.O. 28(k).

21. I do not think the use of the two different words as pointed out by Shri Palshikar makes any material difference. The real question is as to whether there is any legitimate justification for putting any constraint as suggested by the Workman's learned Advocate on the natural meaning and operation of S.O. 26(1), simply because S.O. 28(k) provides that 'Idling or sleeping on duty could be treated as a minor misdemeanour also. Now "Idling or sleeping on duty" may happen under varied situations, making it a gross misconduct in one case and on ignorable misdemeanour in another. To give a small example, an office peon dozing for a minute or two and a

watchman going to sleep for substantially long stretches of time while he is supposed to guard a Petroleum Installation. Obviously the two cases cannot be treated on par.

22. The Workman's learned Advocate relies on the well known decision of the Supreme Court reported in 1984 1 LLJ 16 Glaxo Laboratories (1) Limited Vs. Labour Court, Meerut and others. The decision is squarely distinguishable on facts. The question for decision there was qualitatively different. The Supreme Court has observed, "It cannot be left to the vagaries of the management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less misconduct, not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. The contention that some other act of misconduct, which would per se be an act of misconduct, though not enumerated in the standing order, can be still punished must be rejected. Here before me, commission of an act of omission subversive of discipline is enumerated in S.O. 26(1) as misconduct and a watchman's falling asleep while guarding a Petroleum Installation squarely amounts to an act subversive of discipline. Glaxo does not keep the Workman to any extent.

23. If at all precedents are necessary where sleeping on duty has been held to be an act subversive of discipline, reference may be made to the decision of the Labour Appellate Tribunal of India reported in 1952 1 LLJ 388 Ford Motor Co. of India Ltd. and S. K. K. Naik and a decision of the Industrial Tribunal, Vishkapatnam in 1953 11 LLJ 771 Nelli-marla Jute Mills Company Ltd. Vs. Their Union. Without dilating further I uphold the finding of the Disciplinary Authority that the Workman had committed an act subversive of discipline.

24. The next question is whether outright dismissal from service is the proper punishment for the proved misconduct. It cannot be denied that the Workman had acted irresponsibly in going to sleep, when he was supposed to guard the installation. However, this appears to be the first serious lapse on his part. In his explanation given just two days after the incident, he had stated that he was unwell on the night concerned. There is Pilankar's evidence to the effect that during his visit around 2 a.m., the Workman was found alert. Considering all the circumstances of the case, I think reduction of the Workman's pay by two stages for 2 years without effect on future increments would squarely meet the ends of justice.

25. Last remains the question of back wages. The Management do not suggest that the Workman had any alternative employment after his dismissal. At the same time seriousness of his lapse cannot be overlooked. I think he should get only half back wages.

26. The finding in the Domestic Enquiry that the Workman had committed an act subversive of discipline punishable under S.O. 26(1) of the Standing Orders is justified. The punishment of dismissal is however set aside and substituted by one of reduction of pay by two stages for 2 years without effect on

future increments. The Workman is directed to be reinstated in service forthwith with continuity of service. The reduction in pay shall given effect to from the date of reinstatement. The Management shall pay him 50 per cent of the back wages till re-instatement. Parties to bear their costs as incurred. Award accordingly.

S. N. KHATRI, Presiding Officer  
[No. L-30012/35/87-D.III(B)]

का.प्रा.1528.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33क के अंतर्गत मॅसर्स सीस्कान सर्विसेज (प्रा.) लि., बम्बई के प्रबन्धन के विरुद्ध दायर एक प्रार्थना पत्र के संबंध में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. I बम्बई के पंचपट को प्रकाशित करती है, जो कि केन्द्रीय सरकार को 8-5-91 को प्राप्त हुआ।

S.O. 1528.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 Bombay, as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. Seascan Services Pvt. Ltd. Bombay and their workmen, which was received by the Central Government on the 8-5-91.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 1 AT BOMBAY  
(PRESIDING OFFICER : JUSTICE  
S. N. KHATRI)

REFERENCE NO. CGIT-57 OF 1987

#### PARTIES :

Employers in relation to the management of  
M/s. Seascan Services Pvt., Bombay.

And

Their Workmen

#### APPEARANCES :

For the Management : Shri K. M. Naik, Vice  
President for Maharashtra Employers and  
Professionals Association.

For the Workmen : Shri Jaiprakash Sawant,  
Secretary to the Bombay Port Trust Emp-  
loyees' Union.

INDUSTRY : Ports & Docks.

STATE : Maharashtra.

Bombay, dated 1st May, 1991

#### AWARD

The Central Government has referred the following industrial dispute to this Tribunal under section 10 of the Industrial Dispute Act, 1947, for adjudication.

"Whether the action of the management of M/s. Seascan Services Pvt. Ltd. in illegally terminating the services of 24 Workmen as per the list attached at Annexure-I w.e.f. the respective dates shown herein, is justified? IF NOT, to what relief the workmen concerned are entitled to?"

2. As I am going to uphold the objection of the Management that the reference is incompetent for the reason that the Central Government is not the appropriate Government, I shall restrict the facts to this issue alone.

3. The Twenty four employees detailed in the annexure the order of reference (hereafter collectively referred to as 'the Workmen') are represented before me by the Bombay Port Trust Employees Union, Bombay, (hereafter, 'the Union'). It is not in dispute that these Workmen were in the employment of the M/s. Seascan Services Private Limited, Bombay (hereafter, 'the Company') as Tally Clerks and labourers etc. from different dates which are not admitted. The Union's case was that the Management have illegally terminated their services without following the provision of section 25-F of the Act. They claimed reinstatement with full back wages.

4. In their written statement, the Management inter alia raised an objection that the State Government and not the Central Government was the appropriate Government and as such this reference made by the latter Government, is basically without jurisdiction. In this regard, they aver that they are carrying on their profession as Surveyors, Superintendents, Samplers and Analysts, Marine and Technical Consultants and that their professional services are sought not only by Ship Companies but also by varied Organisations like Railways, Yards, Air-Ports authorities, Factories, Oil installations, warehouses, Insurance Companies, Banking and Financial Institutions etc. Thus their Expert activities involving high specialisation are not necessarily restricted to Shipping Companies and Docks only, but extend to various multifarious fields as indicated above. The Company urge that their industry is not one concerning 'Major Port' as sought to be made out by the Union and therefore the Central Government is not the appropriate Government within the meaning of section 2(a)(i) of the Act, they explain that in carrying out their export investigation in respect of cargoes brought by ships, they do require the services of some non-technical hands such as Tally Clerks unskilled labour. But then, this does not mean that casual labour can be legitimately called dock labour, doing loading, unloading, movement or storage of cargoes etc. at a Sea Port, as sought to be made by the Union. They therefore, pray for rejection of the Reference in limine as being incompetent.

5. In their rejoinder to the written statement, the Union states that the Workmen were employed by the Management in connection with the loading and discharge of cargo at Bombay Port, and inasmuch as it is a Major Port, this becomes an industrial Dispute concerning a Major Port" within the meaning of

section 2(a)(i) of the Act. As such the Central Government is the appropriate Government.

6. Both sides have led oral evidence in the shape of affidavits. The Union have filed affidavits of their Workmen, who state that they were working as Tally Clerks and attending to the Work at the Port of Bombay in connection with loading, unloading, movement, storage, receipt and discharge of cargoes. As against this, Wagle who is the Deputy Manager of the Company has filed his affidavit, affirming the facts adverted to in para 4 supra. The parties also rely on certain documents, which I shall refer to in due course. I have heard Shri Naik for the Management and Shri Sawan for the Union.

7. The evidence of the Workmen is to the effect that they were Tally Clerks and "attending to the work in connection with loading, unloading, movement, storage, receipt and discharge of cargoes". Thus initially the endeavour of the Union was to bring the Workmen within the definition of 'dock-worker' as given in section 2(b) of the Dock Workers (Regulation of Employment) Act, 1949 (hereafter, '1948 Act'). Shri Sawant in his final arguments did not urge and in my opinion rightly that the Industrial Dispute before me concerns the Dock Labour Board established under section 5-A of the above Act. To press his point that the Central Government is the appropriate Government, he relies solely on the position that the Industrial dispute concerns a Major Port. On this aspect Wagle's evidence, the gist of which is as adverted to in para 4 supra, remains unchallenged. It further finds support from various documents on the record. Ex.M-11 is the letter dated 16/1/84 written by the Management to the Dock Labour Board, seeking facilities to carry out their Survey Investigations at the Docks. Ex. M-10 is the reply of the Board to this letter, stating they have no objection to the Company's "carrying out their Survey and superintending work" as enumerated in the letter of 16-1-84. It is thus clear that the Company or their workmen were not engaged in loading|unloading|movement|storage etc. of cargoes in the sense contemplated by section 2(b) of the 1948 Act, but that they were concerned with occasional collecting or otherwise handling samples of the cargo etc. so far as it was absolutely necessary for carrying out their job of professional experts.

8. It is further pertinent to note that after the conciliation proceedings before the Assistant Labour Commissioner (Central) failed in March, 1987 (Ex. WW-4) mainly on the ground that the Management objected to his jurisdiction, the Union moved the State conciliation Machinery. In fact there a memorandum of understand was arrived at between the two sides on 1-10-1987 : See Ex. M-5 (the same of understanding) and Ex. M-6 (letter written by the Management to Ms. Khandegula, Assistant Labour Commissioner of the Maharashtra State). This more or less clinches the issue against the Union. Indeed Shri Sawant is a signatory to this memorandum.

9. The Union relies on Ex. W-9 which is a brochure issued by the Management. It contains the first page—first page only—of the Memorandum of Association of the Company. The Union relies upon the

main objects as enumerated on this pages. In the first place, because the entire memorandum is not available, it will not be possible or proper to draw any firm inferences from a part of it only. Then even otherwise I do not see any thing therein which counters the case of the Management. The activities to be carried on inter alia induce those of Surveyors and Superintendents, Technical Advisors and Consultants, Assessors, Calibrators and adjusters connected not only with shipping and shipping services, but also connected with transport and carriage of goods by air and land. The places where the Management have policies include Bangalore, Haldia, Bhavnagar and Delhi, which are not Sea Ports quite of the Company's important Clients as given in the Memorandum have nothing to do with Port activities. I do not think this Brochure salvages the Union's case to any extent.

10. A Division Bench decision of the Bombay High Court reported in 1961 LLJ 42 Tulsidas Khimil Vs. Jecyeabhaey is relied upon by the Workmen in support of their contention that the present industrial dispute concerns a major port. The ruling is clearly distinguishable on facts. There the dispute related to Workmen employed by an industry in the (i) clearing and shipping department and (ii) Godown department. More, on evidence, in substance, the business of the Company has been found to give export advice on matters referred to in para 4 supra. The decision does not take the Workman's case any further.

11. Taking into consideration all the facts and the circumstance of the case, I find that the Company's objection has a sound foundation in fact. The industrial dispute cannot be said to be one concerning a Major Port. It will fall under section 2(a)(ii) of the Act. The State Government is the appropriate Government. The Central Government had no power and jurisdiction to make the reference. It will have to be rejected in limine as incompetent. The parties shall bear their costs as incurred. Award accordingly.

S. N. KHATRI, Presiding Officer.  
[No. L-31011/2/87-D.IV(A)]

नई दिल्ली, 10 मई, 1991

का.आ.1529.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33क के अंतर्गत से. आरबी शिपिंग कं. प्रा. लि.; बम्बई के प्रबन्धन के विरुद्ध दायर एक प्रार्थना पत्र के संबंध में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 बम्बई के पंचपट को प्रकाशित करती है, जो कि केन्द्रीय सरकार को 9-5-91 को प्राप्त हुआ।

New Delhi, the 10th May, 1991

S.O. 1529.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Bombay as shown in the Annexure in the industrial

dispute between the employers in relation to the management of M/s. Arebee Shipping Co. Pvt. Ltd. Bombay and their workmen, which was received by the Central Government on the 9-5-91.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

#### PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/23 of 1990

#### PARTIES :

Employers in relation to the management of M/s.

Arebee Shipping Co. P. Ltd., Bombay.

#### AND

Their Workmen

#### APPEARANCES :

For the Employer : Shri C. S. Samat, Advocate.

For the Workmen : No appearance.

INDUSTRY : Shipping State : Maharashtra  
Bombay, dated : 3rd May, 1991

#### AWARD

The Central Government by their Order No. L-31012/15/90-IR (Misc.), dated 9-1990 have referred the following industrial dispute to this Tribunal for adjudication under section 10(1)(d) of the Industrial Disputes Act :

"Whether the Management of M/s. Arebee Shipping Co. P. Ltd. shipping Agents Bombay—are justified in terminating the services of Ms. Esther Pinto General Clerk w.e.f. 04-03-1988 vide their letter dated 15-04-1988. If not, to what relief is she entitled?"

(2) The above said workman Mrs. Esther Pinto did not file any statement of claim challenging the said action of the Management. However she filed an application dated 21-11-1990, (Ex. 2) stating thus :

"As per my statement I am not demanding any compensation for the termination of my services except my balance of wage dues. I do not wish to proceed further in this matter. I only pray that my dues are duly granted. I fully accept without any reservation, your final decision granted in this case."

(3) The management filed their say (Ex. 3) to the said application, and stated that they had worked out the dues payable to the workman and they were thus :

(1) Salary for December 1987	Rs. 1,541.50
(2) Salary for January 1988	Rs. 1,443.04
(3) Sick leave for 25 1/2 days	Rs. 1,385.41
(4) Bonus for 1987	Rs. 4,267.00
	Rs. 8,635.95

(4) The management further stated in their say that the gratuity amount of Rs. 7,015.66 due to the

workman has already been collected by her on 11-04-89. The management further stated that they are prepared to pay the abovesaid balance amount of Rs. 8,636.75 to the workman lady and that she may collect it any time from them.

(5) Therefore, in view of the application (Ex. 2) of the lady, as above, and the say of the management (Ex. 3) as above, the present reference stands disposed off. The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer  
[No. L-31012/15/90-IR (MISC)]  
S. S. PRASHER, Under Secy.

नई दिल्ली, 10 मई, 1991

का.ग्रा.1530.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युनियन बैंक आफ इंडिया के प्रबन्धन में संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-5-91 को प्राप्त हुआ था।

New Delhi, the 10th May, 1991

S.O. 1530.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on the 3-5-91.

#### ANNEXURE

Before Shri Arjan Dev Presiding Officer Central Government Industrial Tribunal cum Labour Court

Pandu Nagar, Kanpur.

Industrial Dispute No. 166 of 1988

In the matter of dispute between :

Shri S. B. Singh,

The Assistant General Secretary

Union Bank Employees Union

C/o Union Bank of India Dehradun.

#### AND

The Deputy General Manager,

Union Bank of India

Zonal Office Hotel Clark Awadh

5 Mahatma Gandhi Marg, Lucknow.

#### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. 12011/64/88-D2(A) dated 30th November, 1988, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Union Bank of India in transferring Shri Raghubir Singh Sub Staff of Bareilly, on his promotion to clerical cadre to Moradabad when a vacancy was in existence at Bareilly itself, in violation of the promotion agreement is justified? If not to what relief the workman is entitled to ?



The industrial dispute on behalf of the workman Shri Raghubir Singh, has been raised by the Union Bank Employees Union (hereinafter called as Union). The case of the Union is that on the basis of written test and interview 14 members of sub staff including the workman as named in the list Ext. W. 1 were selected for promotion to clerical cadre vide Staff Circular No. 3198 dated 10-10-87. I may state here that the number and date of the Staff Circular are not given in the claim statement but are given the rejoinder filed by the Union. The Union alleges that vide circular No. 2806 dated 14-5-85 issued on the basis of mutually agreed promotion policy dated 16-10-84 made effective from 1st January, 1983 members of the sub staff on promotion to clerical cadre will as far as possible not be transferred out of station. According to the Union the workman who prior to his promotion to clerical cadre was posted as sub staff at Bareilly on promotion, was mala fide transferred to Moradabad when at that time on account of transfer of Shri B. R. Gangwar clerk to Regional Office Bareilly a vacancy of a clerk had occurred at Bareilly Branch. Instead of posting the workman as clerk on promotion at the Bareilly Branch of the Bank. The said vacancy was filled up by the management by another promotee, namely, Shri Khalil Ullah whose name finds place in the list Ext. W. 1, by transferring him from Faradpur Branch District Hardoi. The Union therefore says, that the above action of the management was unfair and unjustified being against the agreed promotion policy as contained in the above mentioned Staff Circular. The Union has, therefore, prayed that the management be directed to transfer the workman back from Moradabad to Bareilly reimburse all expenses incurred by the workman on his transfer to Moradabad and pay him halting allowance at the rate of Rs. 40 per day so long as the workman remained posted at Moradabad.

3. The management while admitting the promotion policy as envisaged in staff circular No. 2806 dated 14-5-85 plead that the staff circular does not place a bar on the management not to post members of sub staff on promotion to clerical cadre out of station. It simply provides that as far as possible members of sub staff on promotion to clerical cadre will not be posted out of station. In fact transfer/posting/deployment of staff is a prerogative of the management and the same is implemented as per Administrative requirement/exigencies of the bank. It is incorrect to interpret the promotion policy agreement as conferring an absolute right on the sub staff in this regard. So keeping in view Bank's administrative requirements the workman was posted at G. D. Road branch Moradabad by the management on promotion. Similarly Shri Khalil Ullah was posted at Bareilly on promotion. Thus the management cannot be said as guilty of unfair labour practice.

4. In its rejoinder, the Union has alleged that the action of the management in regard to the workman amounts to unfair labour practice within the meaning of section 2(ra) of the Industrial Disputes Act, 1947.

5. In support of its case, the Union has filed the affidavit of the workman and has also filed some documents. On the other hand, in support of their

case, the management have filed the affidavit of Shri S. N. Mehra.

6. The Union's case is that 14 members of sub staff as named in the list Ext. W. 1 annexed to the claim statement were selected for promotion to clerical cadre vide staff circular No. 3198 dated 10-10-87. The workman has corroborated this fact by means of para 6 of his affidavit. There is no specific denial of this fact by the management in their written statement. In para 3 of his affidavit the management witness has almost admitted the case of the Union. Ext. W. 1, which has been admitted by the management the names of the 14 members of sub staff including the names of the workmen and Shri Khalil Ullah finds place. From the said list it appears that at the time of his promotion, the workman was posted at Bareilly.

7. The management witness in his cross examination as admitted that Shri B. R. Gangwar clerk was transferred from Bareilly Main Branch to Bank's Regional Office at Bareilly. He has also admitted that because of the said transfer a vacancy of a clerk at Bareilly Main Branch occurred and the said vacancy was filled up by posting Shri Khalil Ullah who prior to his promotion was posted at Faradpur Branch District Hardoi. I may state here that there is no dispute about the fact that on promotion to clerical cadre the workman was transferred from Bareilly and posted at Moradabad.

8. Ext. W.2, is the copy of extract from staff circular No. 2806 dated 14-5-85, it provides that members of sub staff on promotion to clerical cadre will as far as possible not be transferred out of station. No doubt this circular does not totally restrict the power of the management to post a member of sub staff on promotion to clerical cadre out of station but such a power should be exercised by the management keeping in view the promotion policy. In the instant case, two members of the sub staff, namely, the workman and Shri Khalil Ullah were selected for promotion to clerical cadre on one and the same time. The question is what were those circumstances which compelled the management to fill up the vacancy caused at main branch at Bareilly on transfer of Shri Gangwar to the Regional Office at Bareilly by posting Shri Khalil Ullah who at that time was posted at Faradpur Branch, district Hardoi and not posting the workman in that vacancy. There are no cogent reasons in this regard from the side of the management. All that has been pleaded is that it was done due to administrative requirement.

9. During the course of arguments it was submitted by Shri Mehra on behalf of the management that such a step is taken when the bank management find that in the branches of a particular station most of the members of staff are promotees from sub staff. In such cases, to maintain the efficiency it is not considered proper to further post a member of sub staff on promotion to clerical cadre locally.

10. I am not impressed by this submission at all in the present case. Shri Khalil Ullah who was posted from outside was also such a promotee. Further no order has been placed before the Tribunal



Showing as to under what circumstances, the workman came to be posted out of Bareilly. The fact and circumstances go to show that Shri Khalil Ullah had been brought from outside to Bareilly at the behest of some high ranking officer interested in him. If a certain policy exists then it must be fairly followed by the management. The action of the management on the face of it must appear to be just and fair. It should not smack of malafide.

Hence, on the facts and circumstances of the present case, in view of the agreed policy the action of the management in transferring the workman on his promotion to clerical cadre from Bareilly to Moradabad cannot be held as justified. The workman should be accommodated at Bareilly where prior to his promotion he was posted as sub staff. The management is accordingly directed to post the workman back to any of its branches in the District of Bareilly within a period of six months from the date when the award comes into force. The question of granting other relief as prayed for by the Union does not arise.

T2. Reference is answered accordingly.

ARJUN DEV, Presiding Officer  
[No. I-120011/64/88-D.II(B)]

का.प्रा.1531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ महाराष्ट्रा के प्रबन्धन में संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंबई के के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-91 को प्राप्त हुआ था।

S.O. 1531.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on the 8-5-91.

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

(PRESIDING OFFICER : JUSTICE S. N. KHATRI)

Reference No. CGIT-31 of 1990

#### PARTIES :

Employers in relation to the Management of Bank of Maharashtra.

#### AND

Their Workmen.

#### APPEARANCES :

For the Management.—Shri R. M. Samudra,  
Management Representative.

For the Workmen.—Shri S. T. Sahasrabudhe,  
General Secretary, All India Bank of Maharashtra Worker's Organisation, Nagpur,

INDUSTRY : Banking STATE : Maharashtra  
Bombay, dated 1st May, 1991

#### AWARD

The Central Government has referred the following industrial dispute, to this Tribunal under section 10 of the Industrial Disputes Act, 1947, for adjudication :

“Whether the action of the employer of Bank of Maharashtra Lok Mangal, Pune, in not promoting the 27 Workmen belonging to S.T. community appearing in the Annexure though qualified in the test held to the post of officers as per the result of June, 1988 is justified? If not, what relief the concerned workmen are entitled to?”

2. The arguments in the reference were concluded on 24-12-1990. Thereafter the Management have sent a letter to the Tribunal on 27-2-91, informing that they have unilaterally decided to fill up 27 vacancies in question and have issued promotion orders in favour of the 27 Workmen, “on prospective basis with effect from 1-2-91 with notional seniority from 21-6-88, that is the date on which the results of the last of the promotions were declared”, (underlining mine). The Union of the Maharashtra Bank Employees, who are representing the Workmen in the present reference (hereafter, ‘the Union’) have also sent a parshis on 18-2-91 that the Workmen are accepting the offer of promotion without prejudice to their demand to wages and other benefits with effect from 21-6-88, as pleaded by them. As the parties have not amicably settled this vital aspect, I will have to cover virtually the entire ground. I shall however be as brief as possible.

3. Most of the material facts are not in dispute. The Management and the All India Bank of Maharashtra Employees Federation entered into a settlement (Ex. M-1) dated 29-7-87 regarding the subject of promotion of Clerks (who are Workmen under the Act) to the Junior Management Grade I. Out of the total requirement of General Officers in the aforesaid Grade, it was agreed that 75 per cent vacancies would be filled up by internal promotion from Clerks and the balance by direct recruitment from open market. So far as internal promotion is concerned, 15 per cent of the vacancies were reserved for the Scheduled Castes and 7-1/2 for the Scheduled Tribes (for short S.Ts.) For the year 1988, in all 160 posts were declared by the Management for being filled up by internal promotion. Out of these 29 stood reserved for S.Ts. This figure obviously included some backlog also. The selection process is detailed in para 10 of the Settlement. Para 9 prescribe the qualifications for the initial written test. The basis of selection is stated in Para 10.1 as follows :

#### “10.1 Basis of Selection :

The final selection of employees who have appeared for the written test shall be on the basis of aggregate of marks allotted for service, qualifications, interview and the

performance in the branch/office assessed through the confidential reports.”

4. The para 10.2 provides that there would be 300 marks for the entire selection process. Out of these 200 marks were for the written test and 100 for educational qualifications, Service, Confidential reports and Interview as detailed in Para. 10.2, Para 10.3(i) explains that the nature of the written test, Para 10.3(ii) prescribes the standard of passing the written test. This provision is reproduced below, verbatim.

“10.3(ii) Passing :

The passing in the written grade test and english shall be composite with 40 per cent marks, that is a candidate securing 80 marks out of 200 marks will declared as passed. There will be a relaxation in the qualifying marks for passing for SC/ST employees by 5 per cent. Thus, the qualifying marks for SC/ST employees will be 35 per cent i.e. a candidate belonging to SC/ST category will have to secure 70 marks out of 200 for passing.

5. Para 10.4 to 10.7 deal with the modalities of allotting marks for educational qualifications, Service, Confidential Reports and Interview. Para 11 prescribes modalities for final selection. It is necessary to extract Paras 11.1 and 12.2 only, which are material purposes here.

11.1 A final list of candidates who appear for interview shall be prepared after ranking them according to the aggregate marks obtained by each candidate under heads, viz., written test, educational qualifications, service, confidential report and interview. The marks allotted under the heads confidential report and interview shall not be separately informed. The vacancies shall be filled in on the basis of ranking in the final list.

11.2 A separate list shall also be made in the order of merit for the reserved vacancies.”

6. There is no dispute that all the 29 S.T. Clerks (including 27 involved in this reference) passed the written test obtaining more than 70 marks out of 200 as required by para 10.3(ii) of the Settlement. On account of the very big number of clerks aspiring for promotion, the Management restrict the final selection process to 5 times the number of vacancies. This they call ‘zone of consideration’. Here the total number of vacancies was 160. So the Management restricted the Zone of consideration to 800. Only 2 of the 29 S.T. Clerks could manage to come within this Zone. So the Management promoted these two Clerks only and held the other 27 ineligible for promotion, inasmuch as their ranking in the list according to merit fell as low as No. 906 and downwards. For their action to decline promotion to these 27 Workmen, the Management purported to rely on the Office Memorandum dated 24-12-80 (Ex. M-6) issued by the Department of Personnel and Administrative Reforms to all the Ministries and the Departments of the Central Government, clarifying certain doubts on the principles for promotion to selection posts. The Management have also relied upon an agreement said to have been

reached with the Federation on 15-6-88, modifying original para as 11.2 as follows :

“11.2 In case the sufficient eligible SC/ST candidates are not available on the basis of merit, the gap shall be filled in by selecting candidates of these communities irrespective of merit, but who are considered fit for promotion (as per Government guidelines in force). A merit list shall then be prepared in which names of all the selected officers, General as well as SCs and STs are arranged in the order of merit and seniority according to the general principles for promotion to selection post.

The other terms and conditions of the Settlement remain unchanged.”

7. The case made out by the Workmen in their Statement of Claim and rejoinder is that the Management went wrong in relying upon the guidelines issued by the Government meant for being generally followed by their Establishment, when the relevant procedure was prescribed in all details by the settlement dated 29-7-87 (Ex. M-1). They urge that these Guidelines which are even otherwise directory in nature and not mandatory, can not override the provisions of the settlement Ex. M-1 which was arrived at in all solemnity under section 18(1) of Act and was legally binding on the Management. The Union also challenges the alleged settlement of 15-6-88 for two reasons : namely (a) the original settlement has not been produced or proved and (b) the mandatory provisions of Rules 58 of the Industrial Disputes (Central) Rules, 1957 have not been complied with. In substance, the Union contends that the element of the ‘zone of consideration’ is absolutely irrelevant for determining the right of the 27 Workmen to be promoted. They press that they are entitled to promotion with effect from 21-6-88.

8. The Management have taken the following pleas to resist the Workmen’s Claim :

- (a) The Union have no locus standi to espouse the cause of the Workmen.
- (b) This reference is not tenable in view of the pendency of W.P. 2309/87 before the Nagapur Bench of the High Court.
- (c) The Workmen were not entitled to promotion as they did not fall within the Zone of selection, namely within the first 800 candidates on merit.
- (d) In the face of the second settlement dated 15-6-88 the claim is not tenable.
- (e) The Workmen are not entitled to the back wages and other benefits of the promotion posts with effect from 21-6-88, inasmuch as they have not admittedly worked on those posts before 1-2-91.

9. I am really sorry to say that the Management even after having well realised the hollowness of their action, did not muster the necessary will to do full justice to the 27 Workmen. After having recognised

their notional seniority from 21-6-88, they should have been reasonable enough to undo full the injustice done by them to the Workmen. They should have granted the service benefits of promotion to them from 21-6-88. As I am to hold below that their action is entirely unjustified, I will be saddling token costs of Rs. 2000 on them to place on record the Tribunal's disapproval of their fashion of dealing with the obviously just demands of their Workmen.

10. The parties have not adduced any oral evidence. By consent, documents filed by them have been exhibited. I have also heard the Representatives of the two sides—Shri Samudra for the Management and Shri Sahasrabudhe for the Workmen, and perused the written synopses of their submissions.

11. The Union have filed Ex. W-6, a resolution dated 10-6-88 authorising espousal of the case of the 27 Workmen in question. Indeed objection (a) was not pressed at the arguments stage. It stands rejected. The Management have not produced any evidence to show that any Writ-Petition is pending in the High Court. We do not know what is its subject matter. Again this objection was not pressed at the arguments stage. Accordingly objection (b) also stands rejected.

12. The second settlement modifying the first of 1987 (Ex. W-1) has not been produced before the Tribunal, much less proved. There are no material at all to show that the mandatory requirements of Rule 68 have been complied with. This omission by itself renders the second settlement inoperative. Objection (c) stands disposed of. The first settlement of 1987 (Ex. M-1) prescribes all the details of the selection process including the final stage, in simple unambiguous language. The relevant parts of Paras 10 and 11 which deal with these vital aspects are already reproduced in detail in paras 3, 4 and 5 supra. This settlement is certainly binding on the Management as much as on the Workmen. Now here does it contemplate any constraints like 'zone of consideration' etc. The plain meaning of the provisions is that once an S.T. Clerk is initially eligible for appearing at the written test in terms of Para 9, he has a right to appear at the test and if he secures 70 or more marks at that test, the remaining provisions of Para 10 will automatically follow. If he appears at the interview, his name must come in the final list at the appropriate place accordingly to the marks earned by him, irrespective of the circumstance whether or not he falls within the zone of selection. The only constraints on the initially eligible S.T. candidates according to Para 9, as I perceive, are three :

(i) his failure to get 70 marks or more at the written test;

(ii) his failure to appear at the interview, and

(iii) non-availability of reserved post for him. If he cannot be accommodated within the number of reserved vacancies, of course different considerations will arise. But that is not the problem here. The guidelines issued by the Central Government are in the first place directory and then they cannot override the provisions of a settlement validly reached between the Management and the Workmen. Objections (c) and (d) have also no force.

13. The next question is whether the Workmen can be deprived of their wages and other benefits for the period 21-6-88 to 31-1-91 for the reason that they did not actually work in the promotion posts. It must be noted that this consequence is not the result of their own unilateral action. The Management have cited a decision of the Jabalpur C.G.I.T. dated 30-7-80, where the learned Tribunal did not allow back wages to the Employee concerned on the ground that he did not actually shoulder the higher responsibilities (Ex. W-5). In the first place, the facts of the case are distinguishable. The award was given before the advent of the first settlement. While I concede that the Labour Judiciary has the discretion to make proper and just orders on the question of back wages after considering all the facts and circumstances of a particular case, with respect to the Tribunal, I cannot endorse the proposition that even in a case where the Management by its own action deprives an employee of his due promotion, he should be denied back wages etc. simply because he has not actually done the work on the higher job. I am clear that all the 27 Workmen must get their back salary and other privileges with effect from 21-6-88. I have already indicated my mind on the question of costs. I make the following Award.

The action of the Management in not promoting the 27 Workmen (named in the schedule to the Order of reference) with effect from 21-6-88 is unjustified. The Management have already promoted them with effect from 1-2-91 with notional seniority from 21-6-88. Apart from seniority, it is further declared that these Workmen are entitled to all service benefits including payment of arrears of salary, increments etc. with effect from 21-6-88, as if they have been working on the promotion posts from that date. The Management shall pay the arrears to the Workmen concerned within two months of the publication of this Award. The Management shall also pay Rs. 2000 by way of costs of the Union of the Bank of Maharashtra Employees and bear their own. The dues of the Workmen which remain unpaid even after the expiry of the 2 months after the publication of this Award, shall carry interest @ 12 per cent p.a. from the date of default till full payment.

S. N. KHATRI, Presiding Officer  
[No. L-12011/63/89-D.2(A)]

का.आ. 1532.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, देना बैंक के प्रबन्धन में संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंबई, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-5-91 को प्राप्त हुआ था।

S.O. 1532.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Dena Bank and their workmen, which was received by the Central Government on the 6-5-1991.

## ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL  
TRIBUNAL NO. 2, AT BOMBAY

## PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/19 of 1988

## PARTIES :

Employers in relation to the management of  
Dena Bank.

## AND

Their workmen.

## APPEARANCES :

For the Employers.—Shri R. S. Pai, Advocate.

For the Workmen.—Shri M. A. Deshpande,  
Advocate.

INDUSTRY : Banking STATE : Maharashtra  
Bombay, dated the 24th April, 1991

## AWARD—PART 1

The Central Government by their Order No. L-12012/609/87-D.II(A) dated 15th July, 1988 have referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :

“Whether the action of the management of Dena Bank in dismissing from service Shri Kashinath C. Khedkar was justified? If not, to what relief the workman entitled?”

2. The case of the Workman Shri K. C. Khedkar as disclosed from the Statement of Claim (Ex. 2(W) filed by him in person, in short, is thus :

Initially he was appointed as a Clerk in the Dena Bank and later on was promoted as a Cashier in the Vile Parle Branch of the Bank at Bombay. His service record was all the while unblemished. On 20-1-1981 while counting the cash at the close of the first session of that day, he detected a shortage of Rs. 40,000. He immediately reported about it to the Branch Manager. A police complaint was also filed regarding the theft of Rs. 40,000. Thereafter, the police took his personal search, and also took the search of his house, but no part of the amount was detected anywhere. Thereafter, a charge-sheet was issued against him of a charge of embezzlement, misappropriation and fraud of the Bank's amount of Rs. 40,000 by the Bank's Management. However, no charge of negligence, much less of gross negligence was levelled against him. The Enquiry Officer found the charges of embezzlement, misappropriation, and fraud of Rs. 40,000 as not proved. However, he held Workman guilty of negligent act even though no charge of negligence was levelled against him, and this was against the principles of natural justice. In case, there was a

charge of negligence, the workman would have got the opportunity to show how there was no negligence on his part. However, he was deprived of such an opportunity. Therefore, the finding of the Enquiry Officer that the Workman committed gross negligence causing financial loss of Rs. 40,000 to the Bank, is perverse and unsupported by the evidence on record.

## 3. The Workman further alleged thus :

The enquiry held against him was not held as per the provisions of Bipartite Settlement and as per the principles of natural justice, and as such, is bad-in-law. He was not allowed to be represented by an advocate during the enquiry proceedings. It was incumbent upon the enquiry officer to ask him whether he wanted to engage an advocate. By not putting such a question to him by the Enquiry Officer, the enquiry turned to be an empty formality. The disciplinary authority passed an Order of dismissal from service against the Workman. Against that Order, the Workman filed an appeal to the Appellate Authority, which did not apply its mind, and in routine course dismissed it. Further, the punishment of dismissal from service awarded to him is too harsh and disproportionate to the nature of the charges levelled against him, and is also of a discriminatory nature. The Bank did not take into consideration his unblemished career in the past. In the past there were some other incidents of the loss of big amounts of Rs. 20,000 or Rs. 36,000 or Rs. 1,00,000. However, in those cases, a punishment only of a stoppage of three to four increments was inflicted upon the persons concerned. The present Workman was working in the Juhu and Vile Parle Branches during period of 1977 to 1980. During that period there were several incidents of excess Cash, i.e. receipt of cash in excess of the recorded cash, and in all those cases the present Workman had refunded the excess amounts to the persons concerned, and these amount were ranging from Rs. 10 to Rs. 2,000. This honest behaviour on the part of the Workman was ignored by the Bank Management while imposing the punishment of dismissal from service upon him. Further, out of loss of the amount of this forty thousand in question, the Bank got the reimbursement of Rs. 15,000 from the Insurance Company.

4. Without prejudice to the above said contentions of the workman, he further stated in his Statement of Claim that out of the amount of Rs. 40,000, he is prepared to pay such amount to the Bank as this Tribunal may direct, and that he may be allowed to pay that amount by monthly instalments from his pay. Some other employee by name Shri Solanki was allowed to repay the amount of Rs. 36,000 to the Bank in some other case, and a punishment of stoppage of increments only was imposed upon him.

The Workman, therefore, lastly urged that the action of the Bank in question is not just and proper, that this Tribunal should set aside the Order regarding the dismissal from the service passed against him, and should direct the Bank Management to reinstate him in service with continuity of service and full back wages and other consequential benefits.

5. The Chief Manager (Personnel) of the Dena Bank by his Written Statement (Ex. 3|M) opposed the said claim of the Workman, and in substance contended thus :

While the said Workman was working as a Cashier at Vile Parle Branch of the Bank, a shortage of the cash amount of Rs. 40,000 was detected on 20-1-1981. Hence the Branch Manager suspended him from service by the Order dated 22-1-1981. A charge sheet dated 6-2-1981 was thereafter issued to him for the charge of embezzlement, misappropriation and fraud of the Bank's amount of Rs. 40,000. He was also further charged of doing an act or acts prejudicial to the interest of the Bank or gross negligence involving the Bank in serious financial loss. An explanation was submitted by the Workman which was found unsatisfactory, and hence an enquiry was conducted against him as per the provisions of the Bipartite Settlement. The Bank Manager Shri A.L.F. D'Sa was appointed as an Enquiry Officer. The Workman fully participated in the enquiry proceedings. The Enquiry Officer submitted his report, and found the Workman guilty of the charge regarding the shortage of the cash amount of Rs. 40,000. The Enquiry Officer found that the Workman had committed the misconduct and had committed an act prejudicial to the interest of the Bank or of gross negligence or negligence involving the Bank in serious financial loss. On the basis of the report and the findings of the Enquiry Officer, the Competent Authority by its Order dated 16-4-1982 dismissed the Workman from the service of the Bank. Against that Order, the Workman filed an appeal to the Appellate Authority, i.e. Deputy General Manager, who, after considering the various contentions of the Workman, dismissed the appeal, and confirmed the Order of dismissal from service passed against the Workman.

6. The Chief Manager of the Bank further contended thus :

The enquiry held against the Workman was held as per the Rules of natural justice. The findings arrived at by the Enquiry Officer are just and proper and based on the evidence on record. It is not true that the past service record of the Workman was unblemished. In fact in September 1980, when the Workman was working as a Cashier at the Vile Parle Branch, a shortage of the cash amount of Rs. 380 was noticed, and the said amount still stands in

suspense account as an outstanding. Even earlier in November 1979, there was shortage of the cash amount of Rs. 3,150 on account of the excess payment by the said Workman. In the past there were some cases of the detection of the shortage of the cash amounts, and the Bank had recovered those amounts from the respective cashiers. The cashier is the person who is primarily responsible for the cash in his custody, and the cash bundles are required to be stitched under his direct supervision. The said Workman has not given any reasonable explanation for the heavy shortage of the cash amount of Rs. 40,000 from his custody. After the shortage of said cash amount was detected the Workman had informed about it to the Branch Manager. A police complaint was also filed regarding the loss of the said cash amount.

7. The further contentions of the Chief Manager are thus :

Under the provisions of the Bipartite Settlement, a Workman is entitled to be represented by an Advocate in the domestic enquiry only if permitted by the Bank. In the present case, the Presenting Officer of the Bank was not a legal person, and the Workman was allowed to be defended by the representative of a Union of which he was a Member. As such, a proper opportunity was given to the Workman to defend himself during the enquiry proceedings. The punishment imposed upon the Workman is not harsh, disproportionate, or of a discriminatory nature. The Bank record does not show that the Workman, while working as a Cashier in the Juhu-Vile Parle Branch, had rendered very meritorious service, as alleged by him. It is not true that the Bank received a sum of Rs. 15,000 from the Insurance Company against the loss of the amount of Rs. 40,000. In fact, the claim of the Bank before the Insurance Company was rejected on the ground that the loss was caused due to negligence of the staff of the Bank, and, it was not covered under the policy of insurance. The repayment of the shortage of the cash amount by the Workman to the Bank will not absolve the Workman from the misconduct committed by him. The Chief Manager lastly contended that the action of the Bank in question in dismissing the Workman from service is just and proper, and prayed for the rejection of the prayer of the Workman.

8. The Workman by his Rejoinder (Ex. 5|W) to the Management's written statement refuted the contentions of the Bank Management and stated thus :

The Bank's contention that the Workman was also charged for doing an act or acts prejudicial to the interest of the Bank and of gross negligence, is not true and correct.

It is also not true that the Enquiry Officer held the Workman guilty for the shortage of cash amount. No opportunity was given to the Workman of being heard by the Appellate Authority, before that Authority dismissed his appeal. It is not true that in the past there was the shortage of the cash amount of Rs. 380 or Rs. 3,150 in the Vile Parle Branch. The Workman had given a reasonable explanation for the shortage of amount of Rs. 40,000 to the Bank Management, but that explanation was wrongly rejected by the Enquiry Officer. The punishment awarded to him is harsh and disproportionate. In the case of Shri Vyas, the Cashier of Brabourne Road Branch, Calcutta, even though there was shortage of the amount of Rs. 1,50,000, he was allowed to continue in service. In the case of Shri J. R. Vyas of Raopura Branch of Baroda, even though the charges of committing theft of the Bank's property to the extent of Rs. 6,375, and of gross negligence etc., were held proved, the only punishment imposed upon him was of stoppage of four increments. The Workman, therefore, prayed for setting aside the order of dismissal passed against him and for his reinstatement in service.

9. The Issues framed at Ex. 4 are :

1. Whether in holding the domestic inquiry against the Workman, the principles of natural justice were violated, and was not held as per the norms laid down in Bipartite Settlements ?
2. Whether no proper opportunity was given to the Workman by the Inquiry Officer, to defend himself in the inquiry held against him ?
3. Whether the finding of the Inquiry Officer that the Workman committed gross negligence causing financial loss to the Bank, is perverse and bad-in-law ?
4. Whether the other findings of the Inquiry Officer are perverse ?
5. Whether the action of the management of Dena Bank in dismissing from service Shri Kashinath C. Khedkar was justified ?
6. If not, to what relief the Workman is entitled ?
7. What Award ?

10. The Issues No. 1 to 4 were tried as Preliminary Issues.

11. My findings on those Issues are :

1. Held properly.
2. Proper opportunity given.
3. No
4. No.

REASONS

12. The Workman Shri K. C. Khedkar filed his affidavit (Ex. 6/W) in support of his claim. He

was cross examined on behalf of the Bank Management. No oral evidence was led on behalf of the Bank Management on the said Preliminary Issues. The Workman Shri Khedkar stated and admitted in his cross examination (Ex. 7/W) thus :

He had received the charge sheet issued to him by the Bank, and he himself had replied to it. Shri A.L.F. Desai was the Enquiry Officer, and Shri Rao was the Presenting Officer for the Bank. Shri S. B. Parulekar was representing him during the enquiry proceedings. He was the General Secretary of the Union. They were shown the documents filed by the Bank before the enquiry Officer. The statements of the Bank witnesses were recorded in the presence, and they were cross examined by his above said representative. He gave his statement before the enquiry officer. After the necessary evidence was over, they submitted their arguments in writing before the enquiry officer.

13. The said Workman further stated in his cross examination thus :

He has not gone through any of the Bipartite Settlements between the Banks and the Employees. He does not know if, as per the provision of the Bipartite Settlement, in case an employee intends to engage the services of an advocate, he is to seek the permission of the higher authority of the Bank in writing. As he was unaware of this provision, he did not apply for that permission. Shri Parulekar used to attend the enquiry against the other employees also. During the entire enquiry proceedings he and his representatives had participated.

It is thus quite clear from the different statements made by the workman in his cross examination that the enquiry proceedings were held as per the rules of natural justice, and the provisions of Bipartite Settlement were duly followed.

14. It was urged on behalf of the Workman that the Enquiry Officer or the Bank Management itself should have asked the Workman whether he wanted to engage an Advocate during the enquiry proceedings, and that by not asking such a question, a breach was committed of the provisions of the Bipartite Settlement, and there was also the violation of the rules of natural justice on the part of the Enquiry Officer and the Bank Management. Admittedly no such application was made by the Workman or by his Union to the Bank Management seeking the necessary permission. Ignorance of the necessary provisions of the Bipartite Settlement, or of law on the part of the workman or his union, is no excuse. Admittedly the Workman was represented by his Union Secretary during the Enquiry proceedings. As such there was no breach of the provisions of the Bipartite Settlement, nor the violation of the rules of natural justice was committed in the present case.

15. It was then urged on behalf of workman that no specific charge of negligence or of gross negligence

was framed against the workman, and as such the enquiry officer was not justified in holding the workman guilty of the charge of negligence or gross negligence. I find that even this contention is not correct. The charge sheet dated 6-2-1981 firstly stated that the workman had committed the following acts, namely, embezzlement, misappropriation or fraud of the Bank's amount of Rs. 40,000. Para 4 of that charge further stated that, "Your above act's constitute the acts of gross misconduct in terms of para 19.5(i) of the Bipartite Settlement for any or all of which, if proved, you will be liable for appropriate punishment in terms of para 19.6 of the Bipartite Settlement." Thereafter the provisions of para 19.5 (j) of the Bipartite Settlement was reproduced below the said para 4, and it was thus, "Doing act/acts prejudicial to the interest of the Bank or gross negligence involving the Bank in serious financial loss." I, therefore, find that the attention of the workman was clearly drawn to the charge of gross negligence or negligence as contemplated under para 19.5 (i) of the Bipartite Settlement, by the said charge dated 6-2-1981, and thus no prejudice was caused to the Workman by the conclusion arrived at by the Enquiry Officer of holding him guilty of the charge of gross negligence or negligence.

16. The other contention of the workman is that the Appellate Authority in routine course, without application of mind dismissed his appeal. I find that it is not so. It will be seen from the Order of the Appellate Authority dated 5-7-1983 that he had carefully gone through the evidence on the record, the report on the enquiry officer, and the contentions of the workman and then dismissed the appeal, and did not dismiss it mechanically, as urged by Workman.

17. According to the workman, the finding of the Enquiry Officer that the workman committed gross negligence causing financial loss to the Bank, is perverse and that, his other finding are also perverse. However, I find that it is not so. It will be seen from the concluding portion of the enquiry report that his conclusion that the Bank had suffered a loss of Rs. 40,000 due to negligence of gross negligence of the workman is not perverse, but is based on the evidence on the record before him, and is just and proper. I further find on going through the enquiry report, that the enquiry officer's other findings are also not perverse, but are based on the evidence on record before him, and are just and proper. Issues No. 3 & 4 are therefore, found in the negative.

18. For the above said reason, I find that in holding the domestic enquiry against the workman, the principles of natural justice were not violated, and it was held as per the norms laid down in the Bipartite Settlement, and that proper opportunity was given to the workman by the Enquiry Officer to defend himself in the enquiry held against him. Issues No. 1 & 2 are found accordingly.

P. D. APSHANKAR, Presiding Officer  
[No. L-12012/609/87-D.II(A)]

का. प्रा. 1533.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 8-5-91 को प्राप्त हुआ था।

S.O. 1533.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on the 8-5-1991.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

#### PRESENT :

Shri P. D. Apshankar,  
Presiding Officer

Reference No. CGIT-2/32 of 1988

#### PARTIES :

Employers in relation to the management of  
Bank of Maharashtra.

#### AND

Their Workmen

#### APPEARANCES :

For the Employer.—Shri R. M. Samudra, Representative.

For the Workmen.—Shri V. D. Karmarkar,  
General Secretary, Bank of Maharashtra  
Karmachari Sangh, Pune.

INDUSTRY : Banking. STATE : Maharashtra.  
Bombay, dated the 26th April, 1991

#### AWARD

The Central Government by their order No. L-12012/253/88-D.II(A), dated 28/30-9-1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act :

"Whether the action of the management of Bank of Maharashtra in depriving Shri H. S. Kadam of two graduation increments in violation of Circular No. AX1/ST/SPL/60/85 dated 16-7-1985 and Bipartite Settlement is justified? If not, to what relief is the workman entitled?"

2 The General Secretary of the Bank of Maharashtra Karmachari Sangh by his statement of claim (Ex. 2) challenged the said action of the Bank.

3. The Bank of Maharashtra by their written statement (Ex. 7/M) denied the contentions of the Union,

and made the statements in support of their action in question.

4. The necessary Issues were framed at Ex. 8.

5. The said workman filed his affidavit in support of his case at Ex. 31, and he was cross examined on behalf of the Bank management. No oral evidence was led on behalf of the management.

6. Thereafter, while the case was at the stage of arguments, the Deputy General Manager (Personnel) of the Bank filed an application dated 9-4-1991 (Ex. 34) that,

"The disputed matter is re-considered and it was observed that Shri H. S. Kadam is entitled for the benefits as demanded by the Union. Party No. 1, (Bank) therefore, is taking necessary steps for granting the benefits to Shri H. S. Kadam and in view of the same Hon. Tribunal is requested to treat the dispute as closed."

The General Secretary of the said Union made an endorsement below that application that,

"Since the management (Party I) has admitted all the demands as per the statement of claim, the Union has no objection for this application."

The Chief Manager (Staff Administration) of the Bank thereafter, issued an order dated 10-4-1991 addressed to the workman Shri H. S. Kadam that,

"In order to give you the benefits of additional increments for graduation, you are hereby granted two additional increments with effect from 27-1-1984."

7. Therefore, as the demand of the Union has already been fulfilled by the bank management, the present Reference stands disposed off. The parties to bear their own costs of this Reference.

P. D. APSHANKAR, Presiding Officer

[No. L-12012/253/88-D.II(A)]

का. आ 1534.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूनियन बैंक आफ इंडिया के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बम्बई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 8-5-91 को प्राप्त हुआ था।

S.O. 1534.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on the 8-5-91.

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri P. D. Apshankar,  
Presiding Officer

Reference No. CGIT-2/52 of 1988

PARTIES :

Employers in relation to the management of  
Union Bank of India.

AND

Their Workmen

APPEARANCES :

For the Employer.—Shri S. N. Verma, Personnel Officer.

For the Workmen.—Shri S. S. Paranjape, Representative.

INDUSTRY : Banking. STATE : Maharashtra.  
Bombay, dated the 23rd April, 1991

## AWARD

The Central Government by their order No. L-12011/51/88-D.II(A), dated 18-11-1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :

"Whether the action of the Union Bank of India in relation to its Zonal office at Pune in not promoting the eligible staff as per para (a) of Annexure III of State Circular No. 2547 dated 14th March 1983 issued by it pertaining to the settlement between the management of the Bank and the workmen represented by the All India Union Bank Employees Federation and All India Union Bank Employees Association is justified? If not to what relief the workmen are entitled?"

2. The case of the Union Bank Staff Association as disclosed from the statement of claim (Ex. 2/W) filed by its Assistant Secretary, in short, is thus :

"Pay and allowances of clerical and subordinate staff are determined from time to time by negotiations between the management of Indian Banks' Association, of which Bank is a member and representatives of Unions.

At the time the present dispute was raised, pay and allowances of Award Staff of the Bank were governed by the provisions of Fourth Bipartite Settlement entered into between Indian Banks' Association and representatives of various Unions, and the same are applicable till today.

As per Fourth Bipartite Settlement, Special Allowances for following categories are as under;

Special Assistant	Rs. 456 p.m.
Head Cashier Category C	Rs. 275 p.m.



**Machine Operators Rs. 216 p.m.**

In the year 1987 Indian Banks Association had entered into supplementary agreement with the representative of various unions and agreed to special allowances to machine operators for operating electronic machines at the rate of Rs. 350 p.m.;

In 1983 Bank had entered into agreement with unions and determined eligibility criteria for payment of special allowance. The same had been circulated amongst staff members vide Circular No. 2547 dated 14-3-1983.

Para A of Annexure III of Staff Circular No. 2547 dated 14-3-1983 deals with filling up of posts of Machine Operators. As per this clause, posts of Accounts Machine Operators are to be filled in on the following basis.

'All new posts of Accountants Machine Operators will be filled in on the basis of stationwise simple seniority (without weightage of eligible clerical staff) excluding those who are drawing special allowance higher than those of Accounts Machine Operators as also excluding pure typists, telex operators, Hindi clerks, Stenographers, telephone operators.....in future'.

Thus the abovementioned clause lays down criteria which the bank must follow while filling up the posts of machine operators.

In 1987 the management of the Bank introduced electronic posting machines and Advanced Ledger Posting Machines in Pune City Branch and in Pune Camp Branch. For operating these machines the following employees were posted and given designation of machine operator in February 1987.

1. Shri P. N. Wani
2. Sou. S.R. Mujumdar
3. Sou V. J. Dharmari
4. Shri U. P. Kavadi
5. Shri B. B. Bomble

On 29-8-1987 the management of the Bank issued the staff Circular No. 3176 informing about special allowance of Rs. 350 to be paid for operating electronic machines.

When the allowance was increased the Bank ought to have paid it to Senior eligible employees drawing special allowance less than Rs. 350 p.m. and fulfilling seniority criteria.

The management of the Bank used to published seniority list of employees on Zonal Basis. As per the list the following are the eligible clerks in the Station drawing special allowance less than Rs. 350 p.m.

Sr. No.	Name	Date of joining	Special allowance Rs.
1.	Sou. S.R. Balwalli	19-4-71	216/-
2.	Sou. S.B. Khirid	16-6-71	216/-
3.	Shri J.V. Vilekar	12- -71	216/-
4.	Shri J.V. Shintre	14-7-71	275/-
5.	Shri P.J. Layal	7- -71	275/-
6.	Shri P.K. Garud	25-11-72	275/-
7.	Shri K.P. Harhare	19-12-72	275/-
8.	Shri D.B. Varpe	8-1-72	275/-

As per the promotion agreement Bank ought to have entrusted duties of machine operators carrying special allowance of Rs. 350 to abovementioned eligible employees. But the Bank management has entrusted such duties to following non-eligible employees and violated the norms agreed for appointment of machine operators.

Sr. No.	Name	Date of joining
1.	Shri P. N. Wani	15-11-71
2.	Sou. S. R. Mujumdar	22-11-71
3.	Sou. V. J. Dharamsi	20-9-72
4.	Shri U. A. Kavadi	11-12-72
5.	Shri B. B. Bomble	28-6-73

While paying special allowance the principle adopted is to pay higher allowance to senior most person unless he denies. By paying higher allowance to junior persons, the Bank has deviated from the established principle|usage|custom.

By violating the agreed norms of promotion policy while filling posts of machine operators, the Bank has committed breach of agreement|settlement and indulged into act of unfair labour practice.

Due to Breach of Agreement|Settlement eligible employees are losing irreparable financial losses."

3. The Union therefore prayed that this Tribunal should hold that the Bank has committed a breach of settlement in not promoting the eligible staff of the post of Machine Operator as per Para(a) of Annexure III of Staff Circular No. 2547 dated 14-3-1983, and should direct the Bank to give post of Machine Operators carrying special allowance of Rs. 350 to senior eligible employees w.e.f. February 1987.

4. The Chief Manager of the Union Bank of India by his written statement (Ex. 3) opposed the said claim of the Union, and in substance contended thus :

" 'Accounts Machines' (hereinafter referred to for brevity sake as 'AMS'), and the Advanced Ledger Posting Machines|Advanced Electronic Accounts Machines (hereinafter referred to as ALPMs|AEAMs) are totally different types of machines. The amounts, of the allowance payable to the Operators of these machines are also different, namely, Rs. 216 and Rs. 350 p.m. as per the industry-wise settlement between the banks and the unions at national level.

The industry-wise settlement, however, does not govern the manner and mode of selection of the workman staff for operating the respective Machines. The rules governing Selection of operators for AMs and selection of operators for ALEMs/AEAMs are governed by different settlement arrived at between the Union Bank of India and the Union representing workmen of the Union Bank of India.

The selection of operators for AMs is governed by the settlement arrived at between the bank and its unions as per the Circular No. 2547 dated 14-1-1983. This settlement does not contain any provision for selection of operators for ALPMs/AEAMs.

The settlements governing selection of operators for ALPMs/AEAMs are embodied in the settlements dated 5th April, 1988 and 13th December, 1988 between the Bank and its workmen staff and which settlements have been circulated under Staff Circular No. 3270 dated 12-4-1988 and No. 3373 dated 16-1-1989 respectively.

As per the advice given by the Indian Banks Association to its member-bank, the Union Bank of India appointed certain workmen of the staff to operate the ALPMs/AEAMs purely on ad-hoc basis. Furthermore, under the advice of the Indian Banks' Association, the Bank paid to such operators purely on ad-hoc basis, an allowance of Rs. 216 payable to operators of AMs.

The industry-wise settlement between the Indian Banks' Association and the workmen's Unions was arrived at on 29th March, 1988 by which the special allowance payable to operators of ALPMs/AEAMs was fixed at Rs. 350 with retrospective effect from 1-9-1986 or from the date of operation of the machine, whichever is earlier.

Thereafter the bank and the union arrived at a settlement dated 5-4-1988 which has been circulated under the Staff Circular No. 3270 dated 12-4-1989. However, as many technical difficulties were found in implementing the circular, the fresh settlement was arrived at between the bank and its union on 13-12-1988, which has been circulated under the Staff Circular No. 3373 dated 16-1-1989. It is this settlement which governs the selection of operators for ALPMs/AEAMs on regular basis and for placement of those present operators on ALPMs/AEAMs assigned on ad-hoc basis, in case they are displaced by virtue of the implementation of this settlement."

50. The Bank further contended thus :

"The Bank has already started implementing the selection process for filling up the posts of ALMs/AEAMs operators on regular basis in terms of the settlement dated 13-12-1988. If in this process, the aggrieved workmen in this dispute, are eligible and entitled for selection as operators for ALPMs/AEAMs, they certainly shall be appointed on regular basis.

The dispute raised in the present case has arisen out of erroneous understanding by the workmen that the norms for selection of operators of AMs are applicable for selection of operators for ALPMs/AEAMs and also on the wrong belief that the selection of operators for ALPMs/AEAMs are required to be done purely on seniority basis. In fact, no valid cause or reason for raising any industrial dispute exists."

6. The Bank management further contended thus :

"The Schedule referred to by the Union in their statement of claim is applicable for the purpose of selection of operators for AMs, and not for the purpose of selection of operators for ALPMs/AEAMs. The selection of the operators for ALPMs and AEAMs is governed by the settlement dated 13-12-1988 arrived at between the Bank and its workmen. It is not true that the selection initially for the post of ALPMs for ALPMs/AEAMs. The selection of the Circular No. 2547 dated 14-3-1983, as alleged by the Union. That Circular dealt with the selection of AMs Operators only and not with the selection of Operators for ALPMs/AEAMs. The Bank is under an obligation for selecting Operators for ALPMs/AEAMs as per the terms of the settlement dated 13-12-1988. The Bank has already started its exercise of filling up the posts of Operators for ALPMs/AEAM in terms of the said settlement dated 13-12-1988, which is a settlement arrived at under Section 2(p) of the Industrial Disputes Act. In case any of the aggrieved workmen under the present dispute happen to be eligible to the post of the Operator of ALPMs/AEAMs in terms of the settlement dated 13-12-1988, the Bank will certainly assign those posts to them. The five employees referred to in para. 5 of the statement of claim, viz. Shri P. N. Wanl, Shri U. Kawadi, Shri B. B. Bomble Sou. S. i Majumdar, and Sou. V. J. Dharmasi were given appointments directly as per station-wise simple seniority basis, i.e., as per the promotion agreement. As such, there has been no violation of any of the rules. The present dispute is not regarding the selection of Operators for AMs but it relates to the selection of Operators for ALPMs/AEAM. The Bank will implement the settlement dated 13-12-1988 while selecting the posts of Operators for ALPMs/AEAMs."

The Bank management lastly contended that the Tribunal should pass the award in terms of the contentions of the management.

7. The Issues framed at Ex. 4 are :

1. Whether the norms for the selection of the posts of Operators of Accounts Machines are separate from the norms for the selection of the operators for Advanced Ledger Posting Machines/Advanced Electronic Accounts Machines ?
2. Whether separate allowances are paid to the operators of Accounts Machines and to the operators of Advanced Ledger Posting Machines/Advanced Electronic Accounts Machines under the separate settlements between the Bank management and the workmen Union i.e. the Staff Circular dated 14-3-8 and the settlement dated 13-12-1988 ?

3. Whether the action of the Union Bank of India in relation to its zonal office at Pune in not promoting the eligible staff as per para (a) of Annexure 'III' of Staff Circular No. 2547 dated 14th March, 1983 issued by it pertaining to the settlement between the management of the Bank and the workmen represented by the All India Union Bank Employees Federation and All India Union Bank Employees Association, is justified:
4. If not, to what relief the workmen are entitled?
5. What Award?
8. My findings on the said Issues are :
  1. Yes.
  2. Yes.
  3. The Bank did not commit a breach of the provisions contained in the Staff Circular No. 2547 dated 14-3-1983.
  4. Does not survive.
  5. As per Award below.

#### REASONS

9. Shri Vilas Ramdas Kolhe, the Central Executive Member of the Union Bank Staff Association filed his affidavit in support of the case of the Union at Ex. 5, and he was cross examined on behalf of the Bank management. Shri U. B. Rairikar, the Manager (Personnel) of the Bank filed his affidavit in support of the case of the Bank management, at Ex. 7, and he was also cross examined on behalf of the Union. The Manager Shri U. B. Rairikar stated in his affidavit Ex. 7) thus :

“ ‘Accounts Machines’ (hereinafter referred to for the sake of brevity as ‘AMs’ on the one hand and ‘Advanced Ledger Posting Machines Advanced Electronic Accounts Machines’ (hereinafter referred to as ALPMs/AEAMs) on the other hand, are two totally different types of machines. Appointment of Operators for Accounts Machines is governed by Annexure III to Staff Circular No. 2547 dated 14-3-1983. Some time in the year 1987 ALPMs/AEAMs for the first time were installed in the Branches at Pune. At the time these machines were introduced in the Bank, there were no terms and conditions laid down either in a settlement or in a staff Circular governing the quantum of allowance payable to the operators of ALPMs/AEAMs as well as the norms of selection of the Operators of ALPMs/AEAMs. The question of payment of amount of allowance to the operators of ALPMs/AEAMs was under active consideration at the Industry-wise level between the I.B.A. representing managements of the member Banks and the Unions representing workmen staff of the member banks. The norms for selection for the posts of ALPMs/AEAMs Operators had to be decided by the individual Banks through a settlement with the Workmen of their bank after the industry-wise settlement determining

the allowance payable to the ALPMs/AEAMs Operators was finalised.

Since there were no norms or rules governing the selection of Operators for the ALPMs/AEAMs as well as the quantum of allowance to be payable to such Operators when these Machines were installed at Pune for the first time, the Bank and no other alternative but to call upon willing Workmen to operate ALPMs/AEAMs Machines on ad-hoc basis at an allowance of Rs. 216 p.m. till the settlement governing amount as well as norms of selection in respect of Operators of ALPMs/AEAMs Machines were reached. Therefore, under the advice given by the I.B.A. to its member Banks, this Bank called upon certain Accounts Machines Operators to operate the ALPMs/AEAMs purely on ad-hoc basis. Further, such Operators were paid an ad-hoc allowance of Rs. 216 p.m.

When the allowance of Rs. 216 was made payable to ALPM/AEAM Machines Operators on ad-hoc basis, when these machines were first installed, no workmen staff of the bank including those workmen whose names have been listed in the present dispute, had raised any objection either regarding the quantum of allowance or regarding the workmen appointed to work on the said ALPMs/AEAMs. Till that time it was known whether the allowance which would be fixed for operators of ALPMs/AEAMs would be more or less than the allowance payable to Accounts Machines Operators.

The industry-wise settlement was arrived at between the IBA and the Union representing Workmen Staff of member banks on 29-3-87 by which the allowance payable to the Operators of ALPMs/AEAMs was fixed at Rs. 350 with retrospective effect from 1-1-1986 or from the date of operation of the machines, whichever is earlier.

After the above settlement was arrived at the Industry level determining the quantum of allowance payable to the Operators of ALPMs/AEAMs, a settlement determining the norms for selection of ALPMs/AEAMs Operators was arrived at between Union Bank of India and the Workmen staff of the Union Bank of India on 13-12-1988, which has been circulated by the Staff Circular No. 3373 dated 16-1-1989.

The Bank has already started implementing the selection process for filling up the posts of ALPMs/AEAMs Operators on regular basis in terms of the settlement dated 13-12-1988 and the following Workmen Staff have already issued Memos appointing them as ALPM/AEAM Operators consequent to the Aptitude Test administered to them in ac-

cordance with the settlement dated 13-12-1988 :—

- (a) Shri S. V. Vilekar, appointed vide Memorandum No. 663/89 dated 28-11-1989, annexed and marked as Exhibit 'A'.
- (b) Shri S. V. Shintre, appointed vide Memorandum No. 664/89 dated 28-11-1989, annexed and marked as Exhibit 'B'.
- (c) Shri P. M. Wani, appointed vide Memorandum No. DP : WZII : 226/90 dated 29-3-1990, annexed and marked as Exhibit 'C'.
- (d) Smt. S. R. Mazumdar, appointed vide Memorandum No. DP : WZII : 227/90 dated 29-3-1990, annexed and marked as Exhibit 'D'.
- (e) Smt. M. S. Joshi, appointed vide Memorandum No. 665/89 dated 28-11-1989, annexed and marked as Exhibit 'E'.
- (f) Shri V. S. Paranjpe, appointed vide Memorandum No. DP : WZII : 228/90 dated 29-3-1990, annexed and marked as Exhibit 'F'.

Above said Shri Vilekar and Shri Shintre are the aggrieved workmen in the present case."

Nothing has transpired in the cross examination of this Bank witness to disbelieve him in any way. I, therefore, accept the statement made by this witness in this affidavit.

10. Further, the Union witness Shri V. R. Kolhe admitted in his cross examination many of the important points of the Bank management case thus :

"He is the Central Executive Member of the Union Bank Staff Association. Another Union by name All India Union Bank Employees Association exists in their Bank and it is a majority union in the bank." (As such, the above said witness Shri Kolhe is a member of the minority union in the bank.)

11. He further admitted in his cross-examination thus :

"The dispute regarding the terms and conditions of the employees of the bank are settled by discussion with the majority union. A Circular No. 3373 dated 16-1-1989 has been issued regarding the settlement and working of the ALPM/AEAM Operators. There are two different types of machines in the bank viz., Accounts Machines and ALPM/AEAM. Two separate settlements have taken place regarding these two different types of machines. The Memorandum of Understanding dated 22-10-1982 relates to Accounts Machines (Annexure III to the Staff Circular No. 2547 dated 14-3-1983). The Circular No. 3373 dated 16-1-1989 relates to assignment of duties of ALPM/

AEAM Operators. Upto 1987 there were no separate norms for appointments for the post of Operators of the said two machines and those norms came into existence after 1987, and they were separate norms. There were no two separate allowances for the said two different posts till the execution of the agreement of March 1987 and thereafter separate allowances were paid. The Written Tests were conducted for the appointment of ALPM/AEAM Operators sometime in the year 1988."

12. The zerox copies of different settlements have been placed on record on behalf of the Bank management. Ex. 15 is a copy of the Staff Circular No. 2547 dated 14-3-1983 issued in pursuance of the Memorandum of Settlement, arrived at between the Bank and its Unions regarding the promotion policy effective from 1-1-1983. Clause (a) of Annexure III of this Circular deals with the methods of filling the posts of Accounts Machine Operators. Ex. 20 is a copy of the Memorandum of Settlement dated 29-3-1987 between the management of 57 different Banks including the Bank in question and their Unions. Clause 15(1) of this Memorandum states that the special allowance payable for operation of ALPMs/AEAMs shall be Rs. 350 p.m., and that it will be with effect from 19-1-1986, or from the date of operation of the machine whichever is later. Ex. 18 is a copy of the Staff Circular No. 3373 dated 16-1-1989 regarding the scheme of filling up the posts of ALPM/AEAM Operators, which is effective from 13-12-1988. As per this scheme, all clerical employees, excluding those who are drawing special allowance higher than that of ALPM/AEAM Operators will be eligible as per the promotion agreement in force, and they will be entitled to a special allowance of Rs. 350 p.m.

13. Therefore, in view of the oral and documentary evidence on record, as stated above, I find that the norms for the selection of the posts of Operators of Accounts Machines are separate from the norms for the selection of the Operators for Advanced Ledger Posting Machines/Advanced Electronic Accounts Machines. I further find that the separate allowances are paid to the operators of Accounts Machines and to the operators of Advanced Ledger Posting Machines/Advanced Electronic Accounts Machines under the separate settlements between the Bank management and the workmen's Union i.e. the Staff Circular dated 14-3-1983, and the settlement dated 13-12-1988. Issue Nos. 1 and 2 are, therefore, found in the affirmative.

14. In the result, I find that the Union Bank of India in relation to its zonal office at Pune has not committed any breach of the provisions contained in the staff Circular No. 2547 dated 14-3-1983, in promoting its eligible staff. Issue No. 3 is found accordingly. As such, Issue No. 4 does not survive and is found accordingly.

15. The following Award is, therefore, passed.

## AWARD

The Union Bank of India in relation to its zonal office at Pune has not committed any breach of the provisions contained in the Staff Circular No. 2547 dated 14-3-1983, in promoting its eligible staff.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer  
[No. L-12012/51/88-D.II(A)]

का.आ. 1535:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 3-5-91 को प्राप्त हुआ था।

S.O. 1535.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Canara Bank and their workmen, which was received by the Central Government on the 3-5-91.

## ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 30/84

In the matter of dispute between :

Shri Kamaljeet Sharma,  
772, Tilak Bazar,  
Delhi-110006.

Versus

The Assistant General Manager,  
Lakshmi Commercial Bank,  
Shiela Hotel Building,  
Ram Nagar, New Delhi.

## APPEARANCES :

Shri Tara Chand Gupta for the workman Shri N. C. Sikri with Sh. B. N. Prashar for the management.

## AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/55/83-D. IV(A) dated 23-3-84 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of Canara Bank, New Delhi in relation to

their Queens Road Branch in dispensing with the services of Shri Kamaljeet Sharma, Part-time pass book writer with effect from May, 1982 is justified ? If not, to what relief is the workman concerned entitled ?”

2. The case of the workman, as stated in his statement of claim dated 21-5-84 was that he was appointed as a Part Time Pass Book writer in the erstwhile LCB Ltd. at its Queens Road, Delhi Branch in December, 1979 on one third of the scale wages in the clerical scale of pay ; that he continued in the employment of the said Bank till May, 1982, when his services were abruptly terminated by the management without any prior notice and without giving any reasons; that apart from taking from the workman the work of a Part Time Pass Book Writer, the management was requiring him also to work on other clerical jobs, such as writing of ledger sheets, and long-books, calling of balance, etc., necessitating his work beyond his working hours as a Part-Time Pass Book Writer; that a number of other persons were also engaged by the Bank as Part Time Pass Writers before and after the appointment of the workman and some of them were continued in employment after termination of his services and later on absorbed in full-time permanent service as clerks without offering such opportunity to him. The workman claimed that by virtue of his long employment with the Bank from December, 1979 to May, 1982 he had become entitled to full-time clerical employment well before termination of his services in May, 1982, but the bank acted discriminately against him and in breach of clause 20.6 of the Bipartite Settlement dated 19-10-66 by continuing him as a Part Time Pass Book Writer while absorbing his juniors in the same category in full-time clerical employment. The termination of his services as a Part Time Pass Book Writer from May, 1982 was challenged by the workman on ground of non-compliance with the provisions of S-25-F and 25-G and the action of the management in not employing him after May, 1982 was challenged for being discriminatory and in breach of S-25-H of the Industrial Disputes Act. By way of relief the workman had prayed :

- (a) to hold the action of the management in dispensing with his services from May, 1982 as illegal and unjustified;
- (b) to direct the Bank to treat him as a full-time clerk from the date when any Part Time Pass Book Writer junior to him was appointed as a full-time clerk;
- (c) to direct his reinstatement with full back wages and continuity of service;
- (d) to allow him suitable Costs of the case.

3. The Management in its written statement took up various preliminary objections. It has been alleged that the erstwhile Laxmi Commercial Bank Limited has been amalgamated with the answering Bank i.e. Canara Bank by the Central Government in consultation with the Reserve Bank of India. The workman

was appointed purely on temporary basis as Part-Time Pass Book Writer for a fixed duration. His claim was untenable and the reference as made by the Central Government was untenable and contrary to the well settled law as laid down by the Hon'ble Supreme Court. The Management had entered into settlement with the employees Federation by way of collective bargaining for recruitment of clerical cadre as per norms laid down like the minimum qualifications appearing in the written test regular-interview etc. This settlement continued to be in force till the Bank was amalgamated with the answering bank. The claimant has no legal right to ask for his permanent absorption and cessation of his employment which was for a fixed duration and the reference as made is bad in law and without application of mind. It does not constitute as industrial dispute, the claim was contrary to the existing recruitment policy and the impugned reference was illegal and amounts to over-stepping of jurisdiction not permitted by law and this Tribunal lacks jurisdiction in adjudicating the same.

4. On merits it was further alleged by the Management that the workman was engaged as part time Pass-Book writer in temporary capacity to meet business exigencies and administrative expediency. He had been paid his dues which he accepted without protest and the contract of temporary assignment stood concluded by afflux of time. The contention of the workman that he was doing clerical duties as well was after thought and he might have been doing of his own volition for the purpose of training or learning purpose which did not confer any right on him. He could not be absorbed in clerical side without complying with the requirement of the recruitment policy and even if the Bank had appointed part time pass book writers junior to him it did not confer any right on him and no breach of section 25-F and G Or H of the I.D. Act was involved. The workman was thus not entitled to any relief.

5. The following issues were framed by my predecessor in this case :

1. Whether impugned Reference as made by the Government is bad in law as per the preliminary objections raised by the management ?
2. Whether the reference as made by the appropriate Government is without the application of mind ?
3. Whether Mr. Sharma could be absorbed by the erstwhile L.C.B. despite the fact that he did not fulfil the condition of eligibility as provided in the erstwhile L.C.B. settlement dt. 11-3-80 which was still in force at the material time and continued to be in force till the takeover of the erstwhile L.C.B. by the Canara Bank ?
4. What is the effect/liability of Canara Bank under the Scheme of Amalgamation ?
5. As in terms of reference.

5. I have heard Id. representatives for the parties and have gone through the record. My findings on the issues are as follows :

#### ISSUES NO. 1 & 2

7. Issues No. 1 and 2 are repetitive and overlapping and I shall deal with them together. The Id. representative for the management has urged that the Appropriate Government i.e. Central Government before making reference has not applied its mind in the instant case because the claimant was admittedly a part-time Pass Book writer engaged for 2 hours a day. He did not fulfil the condition of regular employment or permanent absorption with the erstwhile L.C.B. and his engagement as Part time Pass Book writers in terms of Bipartite Settlement dated 19-10-66 was based upon public policy by way of collective bargaining primarily to accommodate the students and retired persons. The claimant had no legal right for permanent absorption for the simple reason that it was contrary to the terms of settlement and that even no demand could be made contrary thereof either as held by the Delhi High Court in case entitled workmen of Hindustan Housing Factory Vs. The Management of Hindustan Housing Factory reported in 1969 LIC 1450.

8. The representative for the workman on the other hand has urged that none of the preliminary objections affects the validity of the reference order. There was nothing in the amalgamation scheme which took away the right/privileges available to the workman under the Industrial Disputes Act or out the powers of the Government to refer for adjudication any dispute. Whether or not the workman was appointed for a fixed period duration as alleged by the workman was a question of fact to be determined by this Tribunal. The factum of termination of service of the workman not having been denied by the Management, the question whether it was illegal or unjustified was certainly a dispute which could be legitimately referred for adjudication by the Government. The question of permanent absorption or not was a matter incidental to the terms of reference and does not affect the validity of the order of reference. Whether the demand of the workman was or was not contrary to the provisions of the bank awards as modified was again a matter incidental to the terms of reference. The preliminary objections raises a question of fact and evidence and by repeating the same time and again it would not affect the validity of the reference order.

9. There was no substance of merit in the objection of the management that the reference was made by the Government without any application of mind. Once the Government in its Wisdom, has made the order of reference it cannot be faulted on the ground that in deciding to the reference the dispute for adjudication the Government has not applied its mind to the facts of the case or to the material before it. It was a case of termination and the Government was fully justified and acted within its power to refer the dispute for its adjudication.

10. On careful perusal of the arguments addressed by the representative for the parties as detailed above I am of the opinion that there is no force in the contention of the Management on these two issues. It was a case of termination of service of the workman and the Government has referred the dispute to this Tribunal for adjudication. It depends upon the facts and merits of the case as to whether the said termination was proved to be justified or not and on the basis of these preliminary objections the reference could not be answered in the negative. The merits and facts of the case has to be gone through which are being dealt with in the next issues. Both these issues are accordingly decided against the Management.

#### ISSUE NO. 4

11. Issue No. 4 deals with the liability of the Canara Bank as the Laxmi Commercial Bank has since been amalgamated with this Bank by a notification of the Government of India. The representative for the Management has urged that the relationship between the erstwhile LCB Ltd. and that of claimant was undisputedly that of MASTER AND SERVANT, determinable by afflux of time, alternatively by requisite notice under the Banks Award, as modified by Bipartite Settlement, being a part-time-pass book writer, was not a regular employee. It is stated at the cost or repetition that the claimant was not entitled to regular employment either as discussed here-before. It is well settled law that in terms of arrangement duly acted-upon between the parties i.e. the claimant and erstwhile Laxmi Commercial Bank Ltd., services could be determined by afflux of time, the said arrangement was duly acted-upon and the claimant even accepted his dues without any protest and/or demand as far back as in May-1982 (Ex. M-6) in furtherance of satisfaction of his claim and accord. As such, he is estopped from raising boggy of contentions belatedly in 1983 i.e. after about a year, on the doctrine of 'Estoppel' and acquiescence, as held by the Hon'ble Calcutta High Court reported in 1986 LIC(2). That the erstwhile LCB Ltd., as is evident from the subsequent events, let-alone the aspect of amalgamation, was placed under moratorium under the Scheme of Amalgamation as aforesaid. The determination of contract of employment as part-time-pass book writer was thus justified when it is not a case of claimant either that erstwhile LCB had engaged or appointed any other person as a part-time pass-book writer in his place; or his substitute, thus, the post of part-time pass-book writer, for all intent and purposes stood abolished meaning thereby that there was no work in the Branch, and as such, the matter being sole-discretion of the employer, it is not amenable for interference by the Courts either. Thus, the action of erstwhile LCB Ltd. in the circumstances, was valid and proper, more specially, when he was not qualified for absorption for regular employment either.

12. In view of the undisputed fact that the claimant was not in the employment on the specified date of amalgamation dated 23-8-85 there was no liability of the answering Canara Bank under the scheme of amalgamation which has statutory status as a delegated legislation.

13. The representative for the workman on the other hand has urged that as regards the effect/liability of Canara Bank under the Scheme of Amalgamation, the scheme itself provides that :

"as from the prescribed date, all the liabilities, duties and obligations of the transferee bank shall become the liabilities, duties and obligations of the transferor bank to the extent and in the manner provided hereinafter."

The scheme further provided that :—

"If on the prescribed date any suit, appeal, or other legal proceedings of whatever nature by or against the transferor bank is pending, the same shall not abate or be discontinued, or be in any way prejudicially affected, but shall subject to the other provisions of this scheme, be prosecuted and enforced by or against the transferee bank."

As regards the employees of the transferor bank, para (10) of the Scheme proved that :—

"All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions as were applicable to such employees immediately before the close of business on 27th April, 1983".

14. Hence, on a combined reading of all these provisions of the scheme, the transferee Canara Bank became liable in respect of the workman concerned herein in the same manner as was the transferor LCB Ltd. on the amalgamation of the transferor bank with the transferee bank. It may be submitted that Section 2(S) of the Industrial Disputes Act, 1947 defines a workman as under :—

"(S) 'Workman' means any person (including as apprentice) employed in any industry to to any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceedings under this Act, in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person..."

Thus even though the services of the workman had been terminated before the prescribed date of amalgamation of the transferor bank with the transferee bank, but he would still be deemed to be a workman of the transferor bank as on the prescribed date and accordingly he would be deemed to be a workman of the transferee bank for the purpose of B-2(s) of the Industrial Disputes Act in respect of the present dispute. Further, the present dispute had already been referred for adjudication on 23-3-84 and the present proceed-



ings, which are also legal proceedings, between the transferor bank and the workman were pending on 23-8-85 i.e. the date of the Government Notification of the scheme of Amalgamation and so the transferee bank became a party to these proceedings in place of the transferor bank.

14. After having gone through the points urged by the representative for the parties I find force in the contention of the representative for the workman. The Hon'ble Supreme Court in case *Workman Vs. Bharat Cooking Coal Ltd. & others* (1978 Labour & Industrial Cases 709) held as follows :

"Section 17 is a special provision relating to workman and their continuance in service notwithstanding the transfer from private ownership to Central Government or Government Company. This is a statutory protection for the workmen and is express, explicit and mandatory every person who is a workman within the meaning of Industrial Disputes Act, 1947, and has been, immediately before the appointed day, in the employment of a mine shall become an employee of the Government Company and shall continue to be so as laid down in Section 17. A workman is defined in the Industrial Disputes Act to mean any person employed in the industry (We omit the unnecessary words) and included any such person who has been dismissed and whose dismissal has led to a dispute. 'It is perfectly plain that the 40 workmen who were dismissed and whose dismissal led to the industrial dispute are 'workmen' within the meaning of S. 17(1) of the Act. Irrefutably follows the inference that they are workmen entitled to continuance in service as provided to S. 17. It is not open to any one to contend that because they had been wrongfully dismissed and therefore, are not physically on the rolls on the date of the take over, they are not legally workman under the new owner. The subtle eye of law transcends existence at gross level. The statutory continuity of service cannot be breached by the wrongful dismissal of the prior employer. It is important that dismissal has been set aside and the award expressly directs reinstatement "with continuity of service by the management for the time being namely the Bharat Coking Coal Company Ltd. The finding that the dismissal was wrongful has not been challenged and therefore, must stand. The Court in *Bihar State Road Transport Corporation* (1970) 3 SCR 708 at P. 714 (AIR 1970 SC 1217 at p. 1221), had to deal with a wrongful dismissal a direction for reinstatement by an award and a transfer of ownership from a private operator to a State Transport Corporation Shelat J. Observed."

15. In the light of the above judgment the workman concerned whose services were terminated in May, 1982 by the erstwhile L.C.B. Ltd. the Canara

Bank is to be deemed to be the employer of the workman within the meaning of section 2(s) of the I.D. Act. It was the Canara Bank i.e. the transferee bank which would be liable for the relief which the workman is held to be entitled in terms of the award to be passed by this Tribunal. In case of wrongful termination of a workman by the Management of erstwhile. Company their claim for reinstatement against the new company was maintainable as was held in 1988 Lab. I. C. 658.

#### ISSUES NO. 3 & 5

16. Both these issues are interconnected and it was not disputed that the workman was appointed as a part time pass-book writer at Queens Road Delhi Branch of the erstwhile LCB Ltd. in December, 1979. He continued to be employed there till the termination of his services in May, 1982. The Management filed a salary voucher dated 27-5-82 for Rs. 528/- by which the salary of the workman for the month of May, 1982 appeared to have been credited to his account purporting to be in full and final settlement. It has been urged by the representative for the management that the scheme to employ part time pass book writers was introduced for the benefit of the students and retired personnel. The workman was a third year student and as such was appointed as part time pass book writers for two hours a day. By no stretch of imagination he should be taken into regular employment as full time clerk because the recruitment policy laid down certain specific conditions like educational qualifications, interview and then absorb in the regular cadre. The mere fact that his services were terminated as part time pass book writer over if admitted for the sake of arguments illegally could not make him entitled to appointment on the regular basis. At best he was entitled to notice pay keeping in view his length of service. He was not entitled to any other relief and he could not be reinstated as a full time clerk in the Canara Bank in which the erstwhile Laxmi Commercial Bank was amalgamated.

17. The representative for the workman on the other hand has urged that paragraph 495 of the Sastry Award required the issuance of a written order to be given on appointment as a part time employee as well which was not done in this case. No order has been shown according to which the services of the workmen could be presumed to have been ended by efflux of time automatically as after the expiry of a particular date. No notice pay nor any notice or compensation was given to the workman. It amounted to retrenchment and the statutory condition of section 25-F of the I. D. Act were not complied with by the Management in this case.

18. On careful perusal of the points urged before me, I am of the view that no order of appointment of the workman has been produced by the Management in this case. It could, therefore, be not said to be a contractual appointment for a fixed period. He had admittedly completed more than 240 days though as a part time workman. His services were abruptly



terminated in May, 82 without giving any notice or retrenchment compensation. I am of the opinion that the part time pass book writer could not be absorbed on regular basis to the regular cadre, by passing the procedure of recruitment merely because of his having worked for a long time as a part time pass book write. This status does not confer on him any right to seek regular appointment in full time cadre either in the erstwhile management or in the present management. The procedure of fulfilling qualifications written test and interview could not be dispensed with. He could also not be made whole time employee of the Management without going through the formalities of the procedure meant for regular recruitments. He could also not be kept as a part time pass book writer with the new management because there was no such existing practice and nor would he be even prepared for this after lapse of so many years. The Management has in fact committed the mistake of not paying the notice period or serving him a notice before his termination. As part time Pass Book writer he was entitled to a notice or retrenchment compensation or pay for notice period which the Management have not complied with. Since the workman termination of service was not justified for want of notice or notice pay only so it would be in the fitness of things that he was compensated by the management for this lapse. The case is pending since 1984 in this Tribunal and the workman is contesting the same. Since he was not entitled to reinstatement as a whole time employee and there was no practice of part time employment now in existence the workman should be paid Rs. 5000 as compensation in all including the costs of this litigation by the management within two months from the date of this order failing which he would be entitled to interest at the rate of 12 per cent P.A. Issues are decided accordingly.

February 27, 1991.

GANPATI SHARMA, Presiding Officer

[No. L-12012/55/83-D. IV(A)]

नई दिल्ली, 13 मई, 1991

का. आ. 1536—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ़ बड़ौदा के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (नं. 1) बम्बई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 3-5-91 को प्राप्त हुआ था।

New Delhi, the 13th May, 1991

S.O. 1536.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 Bombay as  
1358 GI/91—8

shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on the 3-5-1991.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

(Presiding Officer : Justice S. N. Khatri)

Reference No. CGIT-14 of 1990

### PARTIES :

Employers in relation to the management of Bank of Baroda.

AND

Their Workman

### APPEARANCES :

For the Management—None present.

For the Workman—None present.

INDUSTRY—Banking.

STATE—Maharashtra.

Bombay, the 23rd April, 1991.

### AWARD

The Central Government has referred the following industrial dispute to this Tribunal under section 10 of the Industrial Disputes Act, 1947, for adjudication.

“Whether the action of the management of Bank of Baroda in imposing the punishment of stoppage of two increments on Shri V. K. Dalvi, Subordinate staff is justified. If not, to what relief is the workman entitled ?”

2. The workman was charged with and found guilty of the misconduct of attempted theft of five one-rupee coins, while counting coins of this description and preparing packets of 100 coins on 4-6-1986. The parties have filed their pleadings. The matter has been adjourned three times earlier for recording evidence. The parties are absent today. I have waited for them till 12.45 p.m. The workman does not appear to be interested in pursuing the reference. Accordingly I reject the reference for want of prosecution, holding that the workman has failed to prove that the impugned order is unjustified. There will be no order as to costs.

S. N. KHATRI, Presiding Officer

[No. L-12012/381/89-D.II(A)]

का. आ. 1537—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब एंड सिंध बैंक के प्रबंधन से संबद्ध नियोजकों

और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 3-5-91 को प्राप्त हुआ था।

S.O. 1537.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Punjab and Sindh Bank and their workmen, which was received by the Central Government on the 3-5-1991.

### ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, PANDU NAGAR, DEOKI PALACE ROAD, KANPUR

Industrial Dispute No. 161 of 1988

In the matter of dispute between :

### BETWEEN

Shri B. K. Singh,  
General Secretary,  
Punjab & Sindh Bank Staff Union,  
78/56, Latouch Road, Kanpur.

### AND

The Regional Manager,  
Punjab & Sindh Bank,  
Lalbagh, Lucknow.

### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/368/88-D.2(A) dated 18-11-1988, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of Punjab & Sindh Bank Lucknow in not promoting Shri Pritam Singh, Cash Peon to the post of Daftri is justified? If not, to what relief the concerned workmen is entitled?

2. The Industrial Dispute on behalf of the workman has been raised by Punjab & Sindh Bank Staff Union (hereinafter referred to as Union). The case of the Union is that upon the transfer of Shri Hardip Singh who had been working as a Daftri at the Extension Counter, Gurunanak Girls Degree College, Sunder Nagar, on 17-7-1985, the post of Daftri fell vacant at the said branch of the bank. After his transfer the duties of Daftri were assigned to the workman who was the next senior sub staff. According to the Union, the workman performed the duties of Daftri on regular basis from 18-7-1985 to 22-5-1987, but the bank did not pay him the special allowance of Daftri of the said period. Rather the bank notified on Shri Umesh Chandra Bajpai as Daftri at the said branch ignoring the justified and legitimate claim of the workman, who had worked

on regular basis for about two years. The Union has, therefore, prayed that the management of the bank be directed to promote and post the workman who is at present a Cash Peon as Daftri and pay him Daftri allowance w.e.f. 23-5-1987.

3. The management admit that upon the transfer of Shri Hardip Singh a vacancy did occur at the Extension Counter of the Gurunanak Girls Degree College, Sunder Nagar, Kanpur. According to the management, the workman was allowed to perform the duties of Daftri temporarily till such time as some permanent arrangement was made. In respect of performance duties of Daftri the workman was paid Rs. 1757.62 paise on 11-11-1987. The amount was on account of difference of salary for the periods 18-7-1985 to 22-5-1987, 15-6-1987 to 25-6-1987, 3-8-1987 to 8-8-1987 and 17-9-1987 to 30-9-1987. The management plead that since Daftri allowance is sanctioned on the basis of city seniority as per Rules/Policy Shri Umesh Chandra Bajpai was posted as Daftri at the said Extension Counter. According to the management even Shri Bajpai has now been transferred from the said branch to Latouch Road Branch, Kanpur. As such the workman has again started performing duties of the daftri on temporary basis. Para 5.9 of the First Bipartite Settlement clearly lays down that a workman will be entitled to special allowance only so long as he is in charge of such work or performance of such duties which attracts such allowance.

4. The management have then raised some legal pleas. They are that the workman has ceased to be the member of the Union, as such the Union has no Locus Standi to file the present claim statement; and that in any case the matter of promotion are exclusively within the jurisdiction of the management. Promotion cannot be claimed as of right.

5. In its rejoinder the Union alleges that the question of membership of workman hardly affects the legality of the Industrial Dispute. The reference order is perfectly valid.

6. In this case 18-3-1991 was date fixed for hearing arguments. After the arguments were heard the workman moved an application with the prayer that he does not press this case. In the application he has alleged that the bank has paid him back wages of Daftri Allowance. He has also alleged that the bank has assured him that his case would be reviewed and he would be appointed regular daftri if permissible under rules and according to seniority. The application is signed by Shri M. Lal his A.R. The application has not been moved by the Union which espoused the workman's case and raised the industrial dispute giving rise to the present reference. I shall therefore considering the case on merits.

7. In his cross examination, the workman has admitted that in Kanpur 4-5 peons of the bank are senior to him. He has named S/Shri Munni Lal, Harbhajan Singh, Ram Awtar & Umesh Chandra Bajpai. Thus it is not understood how in the presence of so many senior peons at Kanpur, the Union is claiming promotion of the workman on the post of Daftri. In para 6 of the claim statement it has

been alleged by the Union that only the branch seniority has to be seen for the purposes of the post of Daftri. This has been challenged by the management. According to the management promotion depends on Townwise seniority. In this regard the management's contention appears to be more just. From the side of the Union/workman it has not been shown to me that promotion to the post of Daftri is based on the seniority of sub staff in a particular branch according to some staff circular or some provisions of any bipartite settlement.

9. I, therefore, hold that the action of the management of Punjab & Sindh Bank in not promoting the workman in the presence of 4-5 peons senior to him posted at Kanpur, cannot be held as justified. I need not touch the other legal pleas raised by the management. The fate of the case stands sealed by the own statement of the workman about the presence of 4-5 senior peons.

10. The reference is answered accordingly.

ARJAN DEV, Presiding Officer.  
[No. L-12012/368/88-D.II(A)]

नई दिल्ली, 14 मई, 1991

का. आ. 1538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब नेशनल बैंक के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1 धनबाद के पंचाट की प्रकाशित करती है जो केन्द्रीय सरकार को 3-5-91 को प्राप्त हुआ था।

New Delhi, the 14th May, 1991

S.O. 1538.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 3-5-1991.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 150 of 1989

#### PARTIES :

Employers in relation to the management of Punjab National Bank, Patna

AND

Their Workmen

#### PRESENT :

Shri S. K. Mitra, Presiding Officer.

#### APPEARANCES :

For the Employers—Shri D. K. Sahay, Manager (Personnel).

For the Workmen—Shri G. K. Verma, Asstt. Secretary, Bihar Provincial Bank Employees Association and authorised representative.

STATE : Bihar.

INDUSTRY : Banking.

Dated, the 18th April, 1991

#### AWARD

By Order No. L-12012/328/89-D.II(A), dated the 7th November, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Punjab National Bank in denying the promotion/supersession of Shri Shok Haran Prasad Singh is justified? If not, to what relief is the workman entitled?”

2. The case of the management of Punjab National Bank, as disclosed in the written statement, details apart, is as follows :

The concerned workman is not competent to assail the punishment of censure imposed upon him as the matter, at his instance, was raised before Hon'ble Patna High Court and the imposition of such punishment has been upheld by the Govt. That apart, punishment of censure cannot be challenged by the workman as the union, Punjab National Bank Employee Union, a constituent of Bihar Provincial Bank Employees Association, entered into an agreement with the management and the concerned workman belongs to that union in terms of which he was censured. He already accepted the judgement of the Court as well as the contents contained in the agreement. Thus, he is barred from challenging the same before this Tribunal. The reference made by the appropriate Government is incompetent and so the workman is not entitled to any relief. There were three categories of staff in the Bank's service namely, (i) Staff in the officers grade, (ii) non-subordinate staff i.e. employees in the clerical cadre and (iii) subordinate staff i.e., Peon, Messengers, Guard, Sweeper etc. Special Assistants are posted from amongst the staff of the clerical grade in different offices of the Bank to discharge work of the Bank in accordance with the conciliation settlement dated 1-11-88 between the Bank and the Punjab National Bank Employees Federation. The clerks who are found eligible and suitable are posted as Special Assistants against the available post. The persons who are posted as Special Assistant are required to discharge some additional duties in addition to their own clerical duties. They are paid additional allowance for the additional duties performed by them. It is incorrect to say that posting of a clerk as Special Assistant is a promotion. Such posting is not a promotion. In the context of facts and circumstances the

reference itself is without any jurisdiction. That apart Punjab National Bank Employees Union (Bihar) which is affiliated to Punjab National Bank Employees Federation at all India level, entered into a settlement with the management of the Bank on 31-10-74 which is binding between the Bank and its workmen including the concerned workman who claims to be the Dy. General Secretary of the union. This settlement envisages that before any issue or the matter is taken up before Conciliation Officer or Labour Court the same has to be considered and sorted out in the Regional Industrial Relations Machinery meeting. But that was not done in the present case and in view of the matter the present reference is incompetent.

3. The case of the concerned workman, as disclosed in the written statement submitted on his behalf by Bihar Provincial Bank Employees' Association, Patna detail apart, is as follows :

Shok Haran Prasad Singh, the concerned workman, was appointed in the clerical service of Punjab National Bank on 25-1-1980. Whereas the minimum educational qualification for appointment in the Bank's service was matriculation, S.S.C., the workman possessed M.A. LL.B. Degree. During his unblemished service till the last lap of the year 1988, he became very active in trade union activities and was elected to the post of Deputy General Secretary of Punjab National Bank Employees Union (Bihar) on 14-9-1985. Because of his trade union activity, he became eye sore to the management and there also arose some serious misunderstanding with the General Secretary of the union. The misunderstanding rose to such an extent that both the concerned workman, in his capacity as Dy. General Secretary and Y. N. Kumar, in his capacity as General Secretary, lodged complaints against each other to the management alleging riotous behaviour within the premises of the Patna Zonal office on 7-9-89 beyond office hours. Consequently, both of them were placed under suspension by their respective Disciplinary Authorities on the alleged ground that they indulged in a behaviour amounting in gross misconduct in terms of Clause 19.5(C) of the Bi-partite Settlement dated 19-10-1966 read with Personnel Division Circular No. 805 dated 5-11-1984. On 9-9-88 both the complainants withdrew their complaints against each other stating that the complaints were unwarranted and were on account of some organisational misunderstandings among themselves. On 6-10-88 the aforesaid General Secretary entered into a clandestine agreement with the management behind the back of the concerned workman for withdrawal of suspension. The terms of settlement envisage that both the General Secretary and the concerned workman would be transferred from their respective place of posting to different branches within urban agglomeration area of Patna and penalty of censure would be imposed on both of them under minor misconduct in terms of para 19.8-a of Bi-partite settlement dated 19-10-1966. The concerned workman never authorised his General Secretary or any other Office Bearer of the union to enter into the aforesaid agreement with the management. In the aforesaid agreement the union was represented by among others, Anand Mohan Thakur as President and P. K. Choudhary as Treasurer of the union, who countersigned the complaint dated 7-9-88 of the General

Secretary against the concerned workman as witness. The Agreement was unauthorised; besides the signatories to the agreement were holding partisan attitude against the concerned workman which was amply demonstrated by their becoming witnesses to a false complaint dated 7-9-88 of the General Secretary against the concerned workman. The agreement was also bad inasmuch as once charge is framed no one has got authority to negotiate and settle of punishment. The procedure of departmental proceeding as provided in Awards and Bi-partite Settlement is that when an employee is alleged to have done some misconduct, gross or minor, such misconduct is subject to disciplinary enquiry and the concerned workman is required to be given sufficient opportunity to defend himself. He can be found guilty of the charge only in disciplinary proceeding and can be punished for gross or minor misconduct. There are provisions where disciplinary proceeding can be dispensed with in case of minor misconduct in the following circumstances—(i) if the Bank had issued a show cause notice to the employee advising him of the misconduct and punishment for which he may be liable for such misconduct; (ii) the misconduct is such that even if proved, the bank does not intend to award the punishment of discharge or dismissal and (iii) the employee makes a voluntary admission of his guilt in reply to the aforesaid show cause notice. An enquiry need not also to be held if the employee is charged with minor misconduct and the punishment proposed to be given is 'warning' or 'censure'. In the present case punishment of censure was imposed on the concerned workman on the basis of unauthorised and illegal agreement between the union and the management dated 6-10-88. The punishment is also bad and illegal as it was imposed without holding an enquiry and giving an opportunity to the workman concerned to defend himself. The punishment was bad also from the point of view of technicality since alleged misconduct was termed as 'gross' by the management but at the time of awarding punishment the said has been treated as minor. The management indulged in irregularities with the mala fide intention of forestalling promotion of the concerned workman to the post of Special Assistant within the clerical cadre with a special allowance of Rs. 524 per month. He fulfilled the eligibility criteria for promotion to the post of Special Assistant and was called for appearing in the interview for the said post on 27-12-88. He fared well in the interview, but his name did not appear in the list of successful candidates for promotion. The concerned workman enquired the matter of non-inclusion of his name in the list of 14 employees promoted to the post of Special Assistant from the management who informed him by letter dated 27-1-89 that he was debarred from promotion to the post of Special Assistant due to punishment of censure passed on him on 6-10-88. Department from promotion is wholly mala fide and ill-intended to punish him for trade union activities which annoyed both the management and the General Secretary of the union. Clause 2(f) of Punjab National Bank Settlement dated 1-11-88 envisages that the clause of debarment shall not apply in the case of punishment of censure without holding an enquiry. In the present case since punishment of

censure was imposed on the basis of an illegal agreement not provided in Awards or Settlement without holding an enquiry, the same cannot be legitimate ground for debarment. All the fourteen promotees, who appeared in the interview for the post of Special Assistant on 19-12-88 have since been further promoted to the post of Accountant in the Junior Management Grade-1 on the scale of Rs. 2100 to Rs. 4020 without their being subjected to any written test. The management indulged in further irregularities, such as, issuance of notice for voluntary retirement, withholding of salary etc. which were subsequently withdrawn. Thus, it is obvious that the action of the management of Punjab National Bank in denying promotion or causing supersession of the concerned workman in the matter of promotion to the post of Special Assistant with effect from 5-1-89 and subsequently to the post of Accountant with effect from 17-7-89 is wholly mala fide, ill-intended and unjustified. In the circumstances the union has prayed that the action of the management be held to be unjustified, and an award be passed granting relief to the concerned workman.

4. In rejoinder to the written statement of the union, the management has stated that both the concerned workman and Y. N. Kumar were placed under suspension on account of their alleged behaviour within the Bank premises on 7-9-1988. Thereafter by way of disciplinary action both of them were punished for the act of misconduct after a settlement was arrived at in this connection on 6-10-1988 between Punjab National Bank Employees Union and the management. The concerned workman was awarded punishment of censure in terms of para 19.8 and in not as per para 19.12(C)(ii) of the Bi-Partite Settlement dated 19-10-1966 as amended upto date. The concerned workman challenged the order of punishment before Hon'ble Patna High Court in Civil Writ Petition, C.W.J.C. 1300/89. The Hon'ble Court by judgement/order dated 23-2-1989 held, after discussing the merit of the case, that by issuance of order of censure dated 6-10-1988 the Bank committed no error and as such, the punishment of censure imposed upon the concerned workman was affirmed by the Hon'ble Court. The punishment of censure was imposed upon the concerned workman in term of para 19.8 of First Bi-partite Settlement dated 19-10-1966 and the same was validly imposed on him after a valid settlement arrived at in this connection on 6-10-1988 between Punjab National Bank Employees Union and the management of the Bank. It is not open to the concerned workman to invite any adjudication on the correctness of the order of punishment nor can this Tribunal adjudicate the same in view of the order passed by Hon'ble High Court on this issue. The management has reiterated that posting of clerks to the post of Special Assistant is not a promotion from one cadre to higher cadre nor it is a promotion within the cadre itself. The general clerks and clerks posted as Special Assistant carry the same scale of pay; the post of Special Assistant carries special allowance for discharging duties in addition to his routine duty as clerk. The First Bi-partite Settlement dated 19-10-1966, 4th Bi-partite

Settlement dated 17-9-1984 and the settlement dated 1-11-1988 indicate this position. The concerned workman appeared in interview for being considered for posting as Special Assistant on 27-12-1988, but since the punishment of censure was imposed on him on 6-10-1988 which was affirmed by Hon'ble Patna High Court he (Shok Haran Prasad Singh) was debarred on account of the said punishment for a period of one year from the date of punishment in terms of para 2(a) of the Settlement dated 1-11-1988. This punishment was imposed on him in accordance with the settlement dated 6-10-1988 read with para 19.8 of the First Bi-partite Settlement dated 19-10-66. In the circumstances, the management has prayed that the case of the concerned workman has got no merit and consequently he is not entitled to any relief.

5. In rejoinder to the written statement of the management, the union has contended that issue of censure can still be assailed despite the decision of the Hon'ble Patna High Court. The Asstt. Labour Commissioner (C), Patna rejected various pleas raised by the management against the present industrial dispute. It has been reiterated that the entire action of the management in imposing punishment upon the concerned workman was unjustified and ill-motivated with a view to deny due promotion to the concerned workman.

6. The management submitted reply to the rejoinder of the union in which the same position has been reiterated as has been disclosed in its written statement-cum-rejoinder.

7. The management has not examined any witness but laid in evidence a mass of documents which have been marked Exts. M-1 to M-11 in support of its action.

On the other hand, the union has examined as many as five witnesses including the concerned workman and laid in evidence a sheaf of documents which have been marked Exts. W-1 to W-15.

8. Shok Haran Prasad Singh, the concerned workman is qualified academically, he holds master's degree in arts and bachelor's degree in law. It is an undeniable fact that he joined the service of Punjab National Bank on 25-1-1980 as clerk-cum-cashier at Punpun Branch of the Bank within the district of Patna and sometime in 1986 he joined Exhibition Road Branch of the Bank on transfer, also as Clerk-cum-Cashier.

It is the emphatic case of the union that because of his activities in trade union affairs he became an eye sore to the management and that there arose some serious misunderstanding between him and the General Secretary, Y. N. Kumar. The management has not disputed this position in its pleading. The concerned workman, in his testimony before this Tribunal, has asserted that on 15-9-1986 he became Dy. General Secretary of the union and that Y. N. Kumar, General Secretary was sore with him because of his leadership quality and popularity amongst the employees and that he even opposed to his (Singh's) election as Dy. General Secretary. WW-1 Shri Nath

Singh, Secretary of Bihar Provincial Bank Employees Association has stated that Punjab National Bank Employees' Union (Bihar) is an affiliated union of the Association and the concerned workman was Dy. General Secretary of the union at the relevant time. He has further stated that relationship between the concerned workman and Y. N. Kumar, General Secretary of the union was bitter and they were at logger-heads with each other. He has further stated that he had occasion to enquire into the matter at the instance of the Association and the fact was, according to him, that Y. N. Kumar, General Secretary of the union was totally identified with the management and particularly with Sri G. Narayan, the then Zonal Manager of the Bank and was mouth-ing the view of the management while the concerned workman was taking pro-employees stance and Sri Narayan, by exploiting the intra-union rivalry, was trying to finish the concerned workman. Any-way, the evidence on record firmly establishes the position that there was no love lost between Y. N. Kumar, General Secretary and the concerned work-man, who was the Dy. General Secretary of the union and this is manifested in bitter rivalry between them. It appears that their rivalry grew to such an extent that both of them submitted written complaints against each other on 7-9-1988. Written complaint submitted by Y. N. Kumar, General Secretary, to the manage-ment (Ext. W-1) discloses that on 7-9-1988 at about 5.45 p.m. when he was talking with the Comredes the concerned workman and his friends intervened and started abusing him, called him bad names and threatened to kill him if he should go down-stairs. He requested the management that the acts of the concerned workman calling him bad name and threatening to kill him smacked of indiscipline and he urged upon the management to take step against the concerned workman for his wrongful behaviour. As many as ten employees of the Bank figured as witnesses to the complaint of Shri Kumar including Anand Mohan Thakur, President and Prakash Kumar Choudhary. Likewise, the concerned workman also submitted written complaint against Y. N. Kumar on 7-9-1988 alleging that while he was seeking some clarification from Y. N. Kumar on that day, Sri Kumar abused and threatened him and in the process some persons including P. K. Choudhary and Anand Mohan Thakur tried to manhandle him (Ext. W-15), requested the management to take suitable action in the interest of safety and to institute proper enquiry into the matter. It is an undeniable position that the management put both of them Y. N. Kumar, General Secretary and Shok Haran Prasad Singh, the Dy. General Secretary under suspension immediately. The order of suspension clamped down on the con-cerned workman by the management dated 8-7-1988 has been produced as evidence and marked Ext. W-11. But the order of suspension imposed on Y. N. Kumar has not been placed on record. Anyway, both Sri Kumar and the concerned workman withdrew their complaints on 9-9-1988 stating that the same were submitted under some misunderstanding. (Ext. M-3 and W-2). As a matter of fact, the letters of with-drawal of complaint submitted by both of them are couched in the same language. But the matter re-

mained drifting and in such circumstances Shri P. D. Singh, General Secretary of Bihar Provincial Bank Employees' Association by letter dated 17-9-1988 (Ext. W-4) requested the management not to prolong the issue and requested for withdrawal of suspension order immediately in the interest of better industrial incident occurred on 7-9-1988 and was also reinstated the Zonal Manager, Punjab National Bank, on 19-9-1988 soliciting his intervention in the matter and requesting him to withdraw the suspension order for better industrial relation. (Ext. M-5). But the management appeared to remain unrelented. Ulti-mately by an agreement dated 6-10-1988 between the management of the Bank and a Committee formed by Punjab National Bank Employees Union (Bihar), the matter was amicably resolved and the concerned workman was censured in term of para 19.8(a) of the Bi-partite Settlement dated 19-10-1966 for the incident occurred on 7-9-1988 and was also reinstated in service at the branch office, New Market, Patna on 6-10-1988. Shri Singh was informed of this posi-tion by letter dated 6-10-1988 (Ext. M-8). It was pointed out in that letter that he would not be given any personal hearing as the negotiation followed by settlement had taken place at his behest. It appears that similar order was also clamped down on Y. N. Kumar (Ext. M-2).

9. Shri G. K. Verma, authorised representative of the union, has assailed this settlement on various grounds. He has contended that the Awards and Bi-partite Settlement do not envisage settlement of this nature in term of which punishment can be dis-cussed and agreed upon. He has pointed out further that the concerned workman was never a party to the settlement and according to him, the settlement is illegal, irregular and in-operative.

Shri D. K. Sahay, authorised representative of the management has contended that the settlement was perfectly valid and punishment can be imposed upon by such settlement.

Indeed, the various Awards and Bi-partite Settle-ment do not envisage that punishment can be im-posed upon a delinquent employee by way of settle-ment/agreement between the management and the Union. Even so, I do not consider it unfair and improper for a delinquent employee to give his authority to the union to negotiate the matter of his misconduct and to arrive at a proper settle-ment. In the present case it is the definite plea of the management that the settlement was arrived at the behest of the concerned workman. This position is reflected in the letter of the management addressed to the concerned workman dated 6-10-88 (Ext. M-8) and also in the internal communication of the management of the Bank dated 11-8-88 (Ext. M-9). But the concerned workman has hotly disputed this position. In his testimony before this Tribunal he has emphatically stated, adverting to Ext. M-9, that he was not present at the time when negotiation took place for awarding punish-ment to him. However, he has stated that he did not give any authority to anybody for negotiating settlement on his behalf. As a matter of fact, ad-

verting to Ext. W-3 which is a letter written by him to the Chief Manager and Disciplinary Authority, Punjab National Bank, Patna, on 7-10-1988 he has emphatically stated that he did not give any authority to anybody much less a so called committee allegedly formed by Punjab National Bank Employees' Union (Bihar) to negotiate with the management on his behalf. It appears that in the alleged settlement (Ext. M-2) S/Shri Anand Mohan Thakur and P. K. Choudhary figured as signatories. It may be pointed out here that both of them figured as witnesses in the letter of complaint submitted by Shri Kumar to the management against the concerned workman. There is not a whit of evidence to indicate that general body of members of the union including the concerned workman authorised Anand Mohan Thakur and others to negotiate the matter of the concerned workman and Y. N. Kumar with the management and to come to a settlement. This being the position, I have no hesitation to hold that this settlement was effected behind the back of the concerned workman and he was not a party to that settlement.

10. Anyway, the fact remains that the concerned workman was censured for minor misconduct in term of para 19.8(a) of the Bipartite settlement dated 19-10-1966.

I have pointed out before that the concerned workman was put under suspension by the management by letter dated 8-7-88 (Ext. W-11). This letter discloses that the concerned workman indulged in riotous behaviour in the premises of the Zonal Office of the Bank at Patna on 7-9-88 which was a gross misconduct in terms of para 19.5(c) of the Bipartite Settlement dated 19-10-66, read with Personnel Division Circular No. 805 dated 5-11-84. The letter further discloses that pending departmental enquiry he was suspended with immediate effect and the regular chargesheet would follow. Thus, it appears that the charge against the concerned workman was for riotous behaviour which was gross misconduct in terms of Bipartite Settlement and circular of the Bank. But by arriving at an agreement on 6-10-88 both the management and the union agreed that the penalty of censure under minor misconduct in terms of para 19.8(a) of the Bipartite Settlement dated 19-10-66 would be imposed on both the delinquent workman. I have already stated that the management complained against the concerned workman of riotous behaviour which was a gross misconduct in terms of Bipartite Settlement. Riotous behaviour is a major misconduct. In this context Shri G. K. Verma, authorised representative of the union has submitted that the misconduct of riotous behaviour cannot be comprehended under minor misconduct in terms of Bipartite settlement dated 19-10-1966. Indeed, Bipartite settlement dated 19-10-66 comprehends misconduct as gross and minor and riotous or disorderly or indecent behaviour on the premises of the Bank is comprehended as major misconduct under para 19.5(c) of the said settlement and for gross misconduct the punishment prescribed are— (a) dismissal without notice, warning or censure, or (b) an adverse remark, or (c) stoppage of increment or (e) condonation of misconduct and discharge. Riotous or disorderly behaviour is not com-

prehended as minor misconduct and an employee found guilty of minor misconduct may—(a) be warned or censured, or have an adverse remark entered against him, or (b) have his increment stopped for a period not longer than six months. Thus, it is seen that even if the misconduct of disorderly or riotous behaviour was comprehended under gross misconduct the punishment of censure could have been imposed upon the concerned workman.

11. Then again Shri G. K. Verma has submitted that the punishment of censure without recourse to domestic enquiry is illegal. The procedure for domestic enquiry has been laid down in para 19.12 of the Bipartite Settlement. Para 19.12(e) envisages that an enquiry need not be held if—(i) the misconduct is such that even if proved, the bank does not intend to award punishment of discharge or dismissal, and (ii) the bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct; and (iii) the employee makes a voluntary admission of his guilt in his reply to the aforesaid show cause notice.

Admittedly, in the present case the management did not issue any cause notice to the concerned workman and he did not make any voluntary admission of his guilt in reply to the aforesaid show cause notice. In the circumstances, it appears that the domestic enquiry could not have been dispensed with.

12. Shri D. K. Sahay, authorised representative of the management has submitted that the correctness of the order of censure cannot be disputed in view of the judgement of Hon'ble Patna High Court. It appears that the concerned workman filed a Writ Petition before Hon'ble Court which was registered as C.W.J.C. No. 1300 of 1989. The Hon'ble Court, in its order has held that though the petitioner's conduct in the interest of the service of the bank, cannot be said to be good and if the management issued order of censure to be recorded in the Service Book, it had committed no error. Neither the management nor the concerned workman has produced their petition submitted in the Hon'ble Court before this tribunal. It does not appear from the order of Hon'ble Court that the relevant provision of the Bipartite Settlement dated 19-10-1966 was brought to its notice. Anyway, Hon'ble Court has held that it would remain open to the concerned workman to represent if the post of special assistant was not borne on the cadre of clerk to which he belonged and for reconsideration of his case in accordance with the law for promotion.

Shri Verma has cited decision of Hon'ble Supreme Court to emphasise that technical rule of res judicata are not appropriate to industrial adjudication (SCLJ Vol.9-page 422-Management of Shahdara, (Delhi) Sharanpur Light Rly. Co. Ltd. Vs. S.S. Railway Workers Union). He has also cited some decisions in support of his contention that in the present case the rule of res judicata is not attracted.

(i) A.I.R. 1978(SC) 1283;

(ii) A.I.R. 1989(SC) 2240.

Since the pleadings of the parties not submitted before Hon'ble Court have not been made available,



it is difficult to decide the merits of the respective contentions of the parties arrayed in this matter.

13. Anyway, the fact remains that the concerned workman was censured in terms of an agreement between the management and the representative of the union.

Admittedly, the concerned workman appeared in the interview for selection as Special Assistant. The management by letter dated 19-12-1988 (Ext. W-6) directed him to appear in interview for posting as Special Assistant on 27-11-1988. It was also disclosed in that letter that should he failed to appear in the interview without valid reasons, he would be considered as having not been approved for posting as Special Assistant and would be debarred from posting and promotion as Special Assistant for a period of one year which would be reckoned from the date of interview. Admittedly, the concerned workman appeared in the interview but he was not considered for the post of Special Assistant. The concerned workman took up the matter with the management and the management by letter dated 27-1-1989 informed him that he was not considered as Special Assistant as he was debarred due to censure passed on him on 6-10-88 (Ext. W-7). This letter discloses that the concerned workman was otherwise considered but not selected as Special Assistant because punishment of censure was imposed upon him. In this context the management has asserted that posting as Special Assistant is not a case of promotion because both the clerks and the special assistants are borne on the same cadre. The question whether the posting as Special Assistant from the post of clerks is a promotion or not is of much importance in so far as the present industrial dispute is concerned. Anyway, in some of the documents filed by the parties posting of Special Assistant is considered as promotion, such as Exts. W-6 and M-7.

The question that comes to the fore of my consideration is whether the debarment of the concerned workman for his posting as Special Assistant is justified or not. In para 2(f) under heading 'terms of settlement' dated 1-11-1988 (Ext. M-7) it is envisaged that punishment of warning or censure shall, however, debar an employee from posting/promoting as Special Assistant for one year only from the date of such punishment i.e. from the date of warning or censure issued to him. By way of clarification it has been stated that the question of debarment will not apply in the case of punishment awarded under para 19.12(c)(ii) of the Bi-partite settlement without holding an enquiry.

It has been contended by the management that the punishment was imposed on the concerned workman in terms of para 19.8 of the Bi-Partite Settlement dated 19-10-1966. This para envisage the extent of punishment that can be imposed on an employee found guilty of minor misconduct and the procedure for imposition such punishment has been laid down in para 19.12 of the said settlement. Para 19.12(e)(ii) of the said settlement envisages that the punishment of debarment can be imposed where show cause notice

has been issued to the delinquent workman and he made voluntary admission of his guilt without holding domestic enquiry. In the present case no such show cause notice was issued and domestic enquiry was not held. So, the punishment of debarment for one year as imposed on the concerned workman by the management is considered to be illogical, unfair and incompetent.

14. Shri G. K. Verma, authorised representative of the union, has pointed out that the management imposed the order of debarment on the concerned workman for his posting as Special Assistant by way of an afterthought. He has pointed out that the order of censure (Ext. M-8) does not envisage that the concerned workman was debarred from promotion nor has it been spelt out in the Settlement (Ext. M-2). The position appears to be really so. Anyway, I have already held that the order of imposition of debarment on the concerned workman for posting as Special Assistant for one year as imposed by the management is incompetent, unfair and unjustified.

15. This being the position, the concerned workman is entitled to posting/promotion as Special Assistant with effect from the date his junior has been posted/promoted to that post. He has been promoted/posted as Special Assistant with effect from 10-12-1990. In his testimony before this Tribunal, adverting to Ext. W-10, the concerned workman has stated that S/Shri J. K. Singh and B. K. Dubey are junior to him in service, and that they have already been promoted to the post of Special Assistant and thereafter to the post of Accountants. This statement of his has remained unassailed in cross-examination. That being so, he is entitled to get promotion/posting as Special Assistant with effect from the date his juniors aforesaid have been so posted/promoted and his case for further promotion as Accountant should also be considered by the management.

16. Accordingly, the following award is rendered—the action of the management of Punjab National Bank in denying promotion to and superseding the concerned workman, Shok Haran Prasad Singh is not justified. The management of the Bank is directed to post/promote him as Special Assistant with effect from the date his juniors have been so posted/promoted and to consider his case for further promotion as Accountant.

In the circumstances of the case I award no cost.

Sd/-

S. K. MITRA, Presiding Officer  
[No. I-12012/328/89-D.II(A)]

का.प्र. 1539.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार, मै. बी. सी. सी. एल. का सदस्य श्री शाफट मैन के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनबन्ध में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण से 1 घनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-91 को प्राप्त हुआ था।



S.O. 1539.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sudamdih Shaft Mines M/s. BCCL and their workmen, which was received by the Central Government on the 2-5-91.

### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1 AT DHANBAD

In the matter of a reference under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 39 of 1982

### PARTIES :

Employers in relation to the management of Sudamdih Shaft Mine of Messrs. Bharat Coking Coal Limited, P. O. Sudamdih, District Dhanbad.

AND

Their workmen

### PRESENT :

Shri S. K. Mitra,  
Presiding Officer.

### APPEARANCES :

On behalf of the workmen.—Shri D. K. Verma,  
Advocate.

On behalf of the employers.—Shri R. S. Murthy,  
Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 25th April, 1991

### AWARD

The present reference arises out of Order No. L-20012(239)/81-D.III(A), dated, the 20th April, 1982 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :—

### THE SCHEDULE

"Whether the demand of the workmen of Sudamdih Shaft Mine of Messrs. Bharat Coking Coal Limited, Post Office Sudamdih, District Dhanbad that the workload of piece rated Miners employed at Long Wall Face should be reduced from 3.5 Tonnes per head per day is justified? If so, to what relief are the workmen concerned entitled?"

2. The present industrial dispute was raised by the President, Coalfield Labour Union, P. O. Chasnalla, Distt. Dhanbad. Shri Anand Mohan Prasad as President of the Coalfield Labour Union and representative of the workmen concerned submitted written statement on 22-9-83. The case of the sponsoring union, Coalfield Labour Union as disclosed in its Written Statement is as follows :—

A strike notice dated 1-4-81 was served upon the management on 10 point charter of demands which included the demand for the work load of piece rated miners. The piece rated miners of Sudamdih Shaft Mine can never be turned as mechanised face crew as contended by the management because they do not perform the only job as described in the nomenclature of job description for Group VA workmen. These piece rated miners have been performing the job of mines supporting, driving, drilling, charging, blasting and loading etc. as comprehended under "One Man all job" scheme. They are being utilised for all sorts of jobs and demanded work according to rules. Fixation of their work load by the management to the tune of 3.5 tonnes per head per day is against all prevailing work load. It has been asserted that 30 per cent of coal is carried by conveyor belt and another 70 per cent of coal is loaded on tubs by the usual method of using baskets. The shaft mine is mechanised but in practice this has completely failed and the workers have to use gaita and basket for loading of coal. Whatever may have been the work load of these miners during the period the mine was under NCDC in consultation with R.C.M.S. the same cannot be binding on them because it has not been enforced in the NCWA-I and II. The shaft mine was initially targeted to produce 6000 M.T. of coal per day but it has failed to achieve even 1/7th of the target production. The fixation of work load of these workman is violative of bipartite agreement and it was never accepted by the workman. In the circumstances the union has proved that the workload of these workmen be fixed at 81 cft per man per day instead of 3.5 tonne per man per day.

3. The case of the management of Sudamdih Shaft Mine as disclosed in its written statement, details apart is as follows :—

The present reference is not only unwarranted and illegal but it is totally without jurisdiction and the appropriate Government does not appear to have ever cared to get into the cause of the problem presumably because the Conciliation Officer never understood the elementary working of long wall face.

Sudamdih Shaft Mine is a Pilot project relating to deep shaft mining operation of national importance. The private entrepreneur having failed to extract valuable prime coking coal much needed for steel plants through conventional mining method, had abandoned the area. The Govt. of India took up this Pilot Project in deep shaft mining. Coal is available at a depth of 400 meters and the coal seams are highly disturbed geologically. The erstwhile NCDC, in collaboration with the peoples Re-

public of Poland, had undertaken the project in the year 1960. The "Horizontal Mining Method" along with Polish know-how was introduced and machineries were imported. The entire mining operation was based on this concept of "All Men All jobs". As a team Piece rated miners (P.R.M.S.) are required to perform a number of jobs. This concept was also taken from Poland. At the initial stage when the shaft sinking was over, norms were fixed for the P.R.M.S. engaged for development of the face after an agreement with the Colliery Mazdoor Sangh, the recognised union. These norms were introduced consequent upon scientific study in depth by Industrial Engineering Department with the participation of Polish experts and union representatives. The total man-shift, weekly targets and wages were fixed to ensure the wages admissible under the Wage Board. There was scope for earning higher wages when proper effort was made and team work done. When the mine entered in the Coal extraction stages, Polish concept of "Long Wall Face" based on the concept of "All Men All Job" was introduced. This method of coal extraction envisaged that all the face works are to be done by a team of 16 to 18 PRMS such as Drilling, Timbering Charging, Blasting, Muching, Shovelling etc. The study of the Industrial Engineering Department revealed that the production per man-shift comes to 6 tonnes per day, after giving all the allowances which might be possible to give liberally. However, when it was negotiated with the union, Colliery Mazdoor Sangh, recognised and representative union, the "Take Off Point" was kept at 3.5 tonnes which was considerably very low workload fixed for earning the basic wage of Rs. 6.00 as prescribed by the Wage Board for the P.R.M.S. in Group IV. Besides this, 0.75P. was given as Long Wall Face Allowance. It is also treated as basic wages for all practical purposes. The fall back wages was kept at 6.75P. When the NCWA-I came into operation and the wages and work load of PRMS was revised along with others, a fresh agreement was arrived at between the R.C.M.S. and the management and the rate of Long Wall Face allowance was enhanced from 0.75P to Re. 1.62P., thus bringing the basic total wages for the work load of 3.5 tonnes to Rs. 14.62P. The following wages were accepted as corresponding increase for achieving higher productivity over the "Take Off Point of 3.50 tonnes :—

3.50T	14.62 (13 + 1.62)
4.00T	17.21
4.50T	19.80
5.00T	22.40
5.50T	25.00
6.00T	27.58.

This was introduced with effect from 1-4-1975 after a settlement with R.C.M.S., the recognised union on 9-7-1975. Compliance of Rules 58(4) of Industrial Disputes Act (Central Rules) was also made. While increasing the wage structure under NCWA-I, the work load of even-rated miners were also increased. In terms of such increase the Take-off points of 3.50 tonnes fixed earlier should have been gone up to 3.92 tonnes. At the instance of the Union representatives, however, such enhancement was not allowed and the management retained the old work load of

3.5 tonnes. The productivity of 6 tonnes per manshift is comparatively very low in comparison with the international standard. In the year 1979 there were mushroom growth of a number of irresponsible Unions; these unions confused the PRMS working at Sudamdih shaft mine on the concept of "All Men All Jobs." The very concept of "All Men All Jobs" was challenged by the PRMS under instigation from the irresponsible union. They refused to perform some of the jobs which were being performed by them since the inception of the mine. Anyway, the matter was settled after negotiations before the ALC(C), Dhanbad. Piece rated miners agreed to work on the concept of "All Men All jobs." A Joint study was also made to study the norms on the basis of which productivity was fixed 6 tonnes earlier. The P.R.M.S. were also involved and they fully participated in the joint study of the norms. The outcome of the joint study reveals that no change whatsoever was warranted so as to reduce the productivity below 6 tonnes. With the introduction of NCWA-II the Wage Structure indicated above including the Long Wall Face allowance also got changed after discussion with R.C.M.S., the recognised union and now the same stands as hereinafter :—

3.50T	20.80 (18.50 + 2.30)
4.00T	23.77
4.50T	26.74
5.00T	29.71
5.50T	32.68
6.00T	35.65

The Fall Back wages remains at 20.80, whereas the Long Wall Face Allowance is revised to Rs. 2.30 instead of Rs. 1.62 which come into force from the year 1980. The Coalfields Labour Union entered the Sudamdih in the early part of 1980. They marked their entry by creating confusion amongst the P.R.M.S. that their work load was high and that it could not be more than 40-1/2 CFT as prescribed for Miners/Loaders in other conventional mines. As a result of such confusion a section of Miners refused some of the jobs required to be done on the concept of "All Men All Jobs". However, normalcy was restored when there was no support from the other P.R.M.S. Subsequently the industrial dispute was raised by Shri Anand Mohan Prasad, President of Coalfield Labour Union by his letter dated 16-6-1980. The ALC(C) took up the matter in conciliation but that ended in failure. The Ministry rejected the reference by its letter dated 5-6-1981. The Coalfield Labour Union having the support of a handful of workmen failed in its mischievous game. But they have adopted a different method for survival i.e. by getting the matter referred to the Tribunal. Accordingly, they served a strike notice dated 1-4-1981 on the same demand which was earlier taken up in conciliation and rejected by the Ministry. The strike notice on analysis indicates that the Sudamdih Shaft Mine has filed to reach its target of production of 6000 MT per day and the work load of PRMS fixed to the tune of 3.50 tonnes per manshift per day is abnormally high and that Sudamdih Shaft Mine is neither a Mechanical mine nor has it any special feature in order to make such abnormal fixation of work load etc. Anyway, the facts disclosed as above

sufficiently clarify the position and indicate the justifiability of fixing work load at 3.50 tonnes per head per day, and expose the hollowness of the demand of the union. The Conciliation Officer however, took up the matter in conciliation which was earlier rejected by the Ministry even though he was aware that the sponsoring union has no locus-standie at Sudamdih to raise such dispute. In the circumstances, the management has prayed that the demand of the workmen of Sudamdih Shaft Mine for reduction of the work load from 3.50 tonne per head per day is not justified.

4. In rejoinder to the Written Statement submitted on behalf of the workmen represented by Shri Anand Mohan Prasad, the management has alleged that by serving a strike notice dated 1-4-1981 on a ten point charter of demands including one of the demands related to the workload of Piece-rated Miners of Sudamdih Shaft Mine the union sought to unsettle the settlements existing between the management and the Colliery Mazdoor Sangh which was later renamed as Rashtriya Colliery Mazdoor Sangh. It has been denied that mechanised mine is a failure and baskets, tubs and gaita are used in Sudamdih Shaft Mine. The conventional mining system of Board and pillar method has no place in Sudamdih Shaft Mine. Settlements reached between the management and the Colliery Mazdoor Sangh/Rashtriya Colliery Mazdoor Sangh are still in force and have not been terminated and they are still binding on the concerned workmen. The workload of 81 cft per manshift are applicable under NCWA I and II to pick miners, quarry miners, quarry pickminers, quarry loaders, basket loaders and fillers in Andhra Pradesh. The concerned workmen do not fall in these categories.

5. Shri Anant Sethi as Secretary of Sudamdih Area of Coalfield Labour Union submitted a separate Written Statement-cum-rejoinder on 18-11-1983. The case as made out in this W.S. is that the present reference is maintainable and that the provisions of NCWAs have not been correctly interpreted by the management. The remark of the management regarding mushroom growth of union at Sudamdih Shaft Mine is highly derogatory. It has been denied that the Coalfield Labour Union has created any confusion amongst the Piece rated miners. The Coalfield Labour Union is a registered trade union operating with Sudamdih Shaft Mine. The P.R.M.S. of Sudamdih colliery come under the purview of Group VA and their work load is 61 cft. The management has not been paying wages to the P.R.M.S. of Sudamdih colliery employed on long wall face at the rate of 61 cft. Other piece rated workmen similarly situated and similarly working are being paid wages at the rate of 82 cft. work load and there is no reason as to why the PRMS working in the long wall face should not be paid @82 cft. The union has therefore prayed that the work load of PRMS working on long wall face should be 61 cft per head per day and they are entitled wages on such workload with retrospective effect.

In rejoinder to this W.S. the management has asserted that the provision of NCWA-I and II have been

correctly interpreted. The PRMS of Sudamdih colliery are not entitled to work load of 61 cft. Such work load is not applicable to them. It has been denied that the workmen of Sudamdih colliery are being paid wages at the rate of work load of 82 cft.

6. In rejoinder to the W.S. of the management Shri Anand Mohan Prasad, President of the Coalfield Labour Union has reiterated the facts as contained in his W. S. and denied the contentions of the management. According to him the work load should be fixed at the rate of 61 cft perman shift per day.

7. The sponsoring union in support of its demand, has examined three witnesses namely S/Shri Anand Mohan Prasad, C. S. Choubey and Govind Singh and laid in evidence some items of documents in support of the registration of union and authorisation issued in favour of Anand Mohan Prasad. On the other hand the management examined three witnesses namely MW-1 Shri S. C. Sarkar, Agent of Sudamdih Shaft Mine, MW-2 P. R. Sarkar, Mining Engineering who earlier worked in Sudamdih Colliery from February, 1967 to March, 1988 and MW-3 Paltan Jaswara, Mining Sirdar posted to Sudamdih Shaft mine on long wall face from time to time and laid in evidence a mass of documents which have been marked Ext. M-1 to M-12.

8. Sudamdih Project was taken up by the Government of India and in the Process National Coal Development Corporation (hereinafter referred to as NCDC) in collaboration with the Republic of Poland had undertaken the project in the year 1960. Sudamdih Project comprises of both incline and shaft mine. Conventional system of mining by board and pillar method was not suitable for development of mining operation of Sudamdih Shaft Mine. According to M-1 Shri S. C. Sarkar who is now the Agent of Sudamdih Shaft Mine and was posted at Sudamdih Shaft Mine as Supdt. and Manager in 1981 sudamdih Shaft Mine is one of the deepest shaft mine in India having a depth of 440 metres and there are three horizons at intervals of 100 metres and method of extraction of coal followed in this mine is Jankowice method of mining commonly known as long wall method and that his method was introduced by the Polish experts. He has further stated that the conventional system of mining is by board and pillar method and 99 per cent of mines are being operated by this method. Long Wall method (Jankowice) was adopted only for the Sudamdih Shaft Mine in India. He has given a detailed account of mining system by board and pillar method and also the Jankowice system of long wall mining. According to him by board and pillar method the entire property of coal seam is first developed by driving two or three dip galleries in the main dip direction and levelled galleries in strike direction of the seam and pillar of coal are formed before extraction. After formation of these pillars the same are extracted by drilling and blasting. The coal so obtained is loaded into mine cars by the loaders by baskets, and these loaders carry the coal from the face in basket manually to the loading point which is normally situated about 15 to 30 metres away

from the face. In some mines coal is mined by hand picks where the rate of ignition of inflammable gases is high and or the seam is extremely weak in structure because of geological disturbances. In this system of mining the loaders are called normally basket loaders but there are also machine coal loaders and drill coal loaders. The work load of basket coal loader is 81 cft per head per day. All these loaders are required to push the empty tubs to the loading point. This type of mining by board and pillar method is not obtaining in Sudamdih shaft mine. He has further stated that in Jankowice system of long wall mining rise galleries are driven from lower horizon to upper horizon at interval of 100 to 110 metres. In between two consecutive rise galleries, a companion galleries is driven. An armoured chain conveyor is installed in the companion all along its length and after extraction of coal is started from the dip side to the rise side by opening one stable at the centre, blasting of slice of 4.5 to 6 metre width all along is done by drilling and blasting. In this system there is provision for systematic support of roof and side as the extraction of slice progresses and after extraction of slice conveyor is shifted towards the rise side and then the void is created after extraction of slices is hydraulically stored by sand. W-1 Shri C. S. Choubey Joint General Secretary of the sponsoring union has also stated that the long wall system of mining is known as Jankowice long wall mining which is in operation in Sudamdih only. In the settlement between the management and the union this system is also described as Jankowice long wall system Ext. M-3. Thus from the evidence on record it is obvious that the Jankowice system of long wall mining obtaining in Sudamdih shaft mine is different from the conventional system of mining by board pillar method as obtaining in other collieries. This being so it was considered necessary to organise the work force particularly Miners/ loaders on different pattern. The realities of this situation was also recognised in the report of the Central Wage Board for Coal Mining Industry (hereinafter referred to as Wage Board Recommendation for the sake of brevity). In para-18 at page 62 of the report the Wage Board has stated as follows :—

“In Sudamdih and Monidih Collieries of the N.C.D.C. where mechanised shaft sinking has been adopted, the management in agreement with the Union have introduced a special cadre scheme covering the team of workers employed in the various jobs and operations of shaft sinking....”

9. Admittedly, the concerned workmen are piece rated miners and the evidence on records indicate that their duties include shovelling of coal on conveyors. In conventional system of mining the miners are classified as Pick Miner, Drill Coal Miner, Basket Loaders (Mc Loader), Shovel Loaders, quarry Pick Miners, Quarry Miners, Quarry Loaders, WWI has stated that the concerned workmen are piece rated workers and work load of piece rated workers are divided into four types (1) Pick Miner, (2) O. P. Loader, (3) Drill Loader/Blasted Coal loader/dresser-cum-loader and (4) M. C. Loader. According to him before the NOWAs came into effect, the work load of pick miners, drill loader/blasted coal loader,

dressor-cum-loader and M.C. Loader were 36 cft, 42 cft, 54 cft and 72 cft respectively per man per shift and according to NCWA-I to 111 the work load of pick miner, O.P. Loader drill loader/blasted coal loader/dressor-cum-loader and M.C. Loader has become 40.5 cft, 54 cft, 61 cft and 61 cft respectively.

10. Shri C. S. Choubey has given a vivid job description of the aforesaid miners as well as the concerned piece rated miners. According to him the job of pick miners in the underground is to cut the slabs of coal physically by picks and to load the same on the tubs or on conveyor belts. The job of O.P. Loader comprises (1) drilling (2) cleaning of face and (3) loading of blasted coal on tubs or on conveyor belts. The job of machine coal loaders is to cut slabs by machine and to load the same on coal tubs mines cars or conveyor by shovel. The job of drill coal miner/blasted coal miner is to load the blasted or drilled up coal on the tubs mines cars or conveyors and also to dress up the blasted portion of the coal seam in order to keep the same in readiness. Long wall face crew work employed on long wall face and loaders employed on long wall face perform the job of blasting, loading of coal by shovel, withdrawal and fixing of conveyor, supporting of roof and wall, drilling, shot firing, spraying of water and transport of all machined materials from one place to another place. They are also required to load the coal collected on the bottom and to top of the long wall after cutting the same by picks. According to MW-1 Shri S. C. Sarkar firing of shot is done by shot Firing Mining Sirdar and the shot firing work is not done by crew, but drilling of whole is done by face crew. Face crews are multi skilled worker and their job description are (1) drilling (2) assisting the Mining Sirdar in charging and stemming the shot holes, (3) shovelling the coal after blasting and (4) supporting the roof and side of the face systematically and operating the face conveyor. MW-2 P. R. Sarkar has stated that workman working on long wall face are, though called miners, are supposed to work on all men all job basis, and they are called multi skilled face workers. As a matter of fact the jobs require to be performed by the long wall face workers were enshrined in the settlement for the first time between the management and the representative of Colliery Mazdoor Sangh the than recognised union and predecessor of Rashtriya Colliery Mazdoor Sangh, Ext. M-1. The terms of settlement envisage that the jobs of (1) drilling, (2) stemming/charging, (3) loading and dressing and (4) timbering, (5) conveyor attending and shot firing were required to be done by long wall face workers. Thus it is seen that the shot firing was one of the items of duties as reflected in this settlement. This settlement was replaced by another settlement dated 11-8-71 but the job description remained unchanged marked Ext. M-2. Thereafter another settlement was arrived at on 9-7-75 i.e. after the introduction of NCWA-I whereby the rates of wages were revised Ext. M-3. Lastly by settlement dated 27-1-87 Ext. M-5 the management arrived at agreement with Bihar Colliery Kamgar Union and there the job descriptions for the long wall face workers along with other were laid down which are as follows :—

“1.3. That the multi skilled PR workers deployed in Jankowice long wall faces as mentioned

above shall carry out the following jobs on "All Men All Jobs" concept basis for coal getting.

- (i) All operation on connection with drilling holes in the face.
- (ii) All assistance in connection with shot firing in face, this will be subject to prevailing practice.
- (iii) Dressing the Face.
- (iv) Loading coal manually into face conveyor.
- (v) Erect support in the face as per systematic timber support rules as laid down by the DGMS/Management from time to time and any other support required as the situation demands.
- (vi) Carrying supporting materials from either end of the face conveyor.
- (vii) Operating the face conveyor.
- (viii) Spraying the face before and after the blasting as per statute but subject to the prevailing practice.
- (ix) Carrying out other jobs as deemed fit in the event of any break-down/stoppage of the face.
- (x) Any other jobs connected with the safety of the workman engaged in the faces.

#### 2.1 ROAD HEADER FACES :

That in road header faces the standard work load on weekly basis will be 24 mets. of drivages in 180 manshift. In other words 10 men per shift will work for 18 shift at 100 per cent of the efficiency.

2.2 That the multi skilled PR worker deployed in the Road Header faces as mentioned above shall carry out the following jobs on "All Men All Jobs" concept basis.

- (i) To assist in maintenance of road header machine.
- (ii) Cutting of coal by Machine.
- (iii) To assist in extension of conveyor for carrying coal.
- (iv) Support of Face as per systematic support rules and addl. support as and when required.
- (v) Shovelling, grading, dressing and other maintenance work which will be necessary for securing of the face.
- (vi) Handling of materials within 30 mts. of the face.
- (vii) Hand tramming of empty and loaded mine car in the face.
- (viii) Assisting in tract gang in extension of the track in the face.
- (ix) Any other work, which may be necessary for the safety progress and the maintenance of the face and the equipments.

#### 3. OTHER DEVELOPMENT FACES :

3.1 That there are various type of drivagon driven through coal/stone by multi skilled PR

worker on "All Men All Jobs" concept basis.

3.2 That the standard manning/work load on weekly basis with different condition for different drivagon at standard performance is given in the Annexure-I.

3.3 That the fall back level of work load for the purpose of payment will be 80 per cent of the standard as given in the Annexure-I.

3.4 That the multi skilled PR worker deployed in development faces other than road header faces as mentioned above shall carry out the following jobs on "All Men All Jobs" concept basis.

- (i) All operations in connection with drilling holes in the face.
- (ii) All operation in connection with shot firing in the face.
- (iii) Face drilling.
- (iv) Loading coal from face to mine car/tub/conveyor.
- (v) Erecting support for the face as per the systematic timbering rules and other support required as the situation demand fit.
- (vi) Carry support materials, conveyor pass, chains and other fittings etc. from a distance of 30 mts. from the face.
- (vii) Operating the face before and after blasting.
- (viii) Supporting the face before and after blasting.
- (ix) Shall carry out the other jobs as demanded in the events of stoppage/break-down in the face."

Thus it is seen that shot firing is no longer the duties of the long wall face workers.

11. Now I will consider the demand of the concerned workmen concerning their work load. Wage Board recommendation envisage that the work load of loaders who shovel coal on conveyors should be negotiated at unit level with the workmen concerned and the representative. In accordance with this guideline the management of Sudamdih and the Colliery Mazdoor Sangh representing the workmen entered into a settlement with regard to the work load of piece rated miners. As per the settlement the work load was fixed at the rate 3.5 tonnes per man shift along with the basic wages Ext. M-1. The case of the sponsoring union in the present case is that the work load of 3.50 tonnes per man shift is too heavy in consideration of the work load of other miners. The work load of other miners working in conventional system of mining has been spelt out from the evidence of WW-1 Shri C. S. Choubey. His statement with regard to the work load of different type of loaders is in agreement with the work load as envisaged in NCWA-I-II. The sponsoring union, by comparison of work load of different types of miners working in conventional system of mining has contended that the work load of piece rated miners working on long wall face in Sudamdih Shaft Mine is too heavy. The W.S. submitted by Shri Anand Mohan Prasad as

President of Coalfield Labour Union suggests that the work load should be fixed at 81 cft per manshift instead of 3.50 tonnes. The W.S. filed by Shri Anant Sethi claims that the work load should be fixed @61 cft per head per day although in the W.S. it has been stated that since other piece rated workmen similarly situated are being paid wages @81 cft workload at Sudamdih Colliery, there is no reason as to why the piece rated miners working in long wall face should not be paid wages @82 cft of work load. Shri Choubey in his testimony stated that the work load should be fixed @61 cft per man shift. Thus it is evident that there is no consistency with regard to the extent of work load to be fixed for piece rated worker at Sudamdih colliery in the W.S. as well as in evidence of Shri Choubey. Anyway, the fact remain that the work load 3.5 tonnes per man permanshift was fixed by way of settlement between the management and the recognised union, Ext. M-1. By subsequent settlement dated 11-8-71 the work load remained the same but the rate of wages were revised the same. It appears that in 1979 there was stay-wage rate were revised by settlement between the management and the union but the work load remained the same. It appears that in 1979 there was stay-in-strike in Sudamdih Shaft mine and the management and the recognised union RCMS came to a settlement for review of the earlier settlement. MW-2 P. R. Sarkar is a qualified Mining Engineer and has specialised in Industrial Engineering. He stated that he worked in Sudamdih colliery from February, 1967 to March, 1988. He has further stated that he was associated with Industrial Engineering for determining the work norm of long wall face worker of Sudamdih Project. According to him the norm of long wall face miners was assessed as 6.00 tonnes per manshift at standard performance but by settlement with the union the work load was fixed at 3.5 tonnes per manshift. According to him a study team conducted study over the controversy regarding the work load of the workmen and S/Shri Misri Pandey, Prabhunath Singh and Badri Mistry were the representatives of the workmen in the study team. He has proved the conclusion of the study team which has been marked as Ext. M-10. This document indicates that the existing work norms were based on scientific studies. He has also proved multiple activity chart, Ext. M-12 and according to him the chart indicates sequence of different operations, deployment of man power in long wall face and that the chart shows that 6.00 tonnes per man per shift can be achieved at a standard performance. As per this chart a group of 12 workmen working in a particular shift is required to devote 180 minutes time exclusively for loading of coal on the conveyor and during the rest of the working period they were required to do other misc. job. It has been contended by the union that since the workmen are required to devote 6 hours time for achieving the work load of 3.5 tonnes per man per shift in the matter of loading of coal on the conveyor the work load of 3.5 tonnes per man per shift is extremely high in comparison to the work load of different types of miners working under conventional system of mining.

12. MW-1 Shri Sarkar has stated that the coal which directly falls on the conveyor is taken into account for computing output of face crews. It re-

mains to be seen as to how much of coal directly falls on the conveyor. According to Shri S. C. Sarkar, MW-1, about 30 to 40 per cent of coal falls directly on the conveyor and gets transported by the conveyor to the loading point via chuts and retarder by mechanical process. It was suggested to him by the sponsoring union that only 20 per cent of blasted coal falls on the conveyor belt. He has denied this suggestion. The report of the ALC(C) reveals that he has made a spot enquiry and found that 40 to 50 per cent of blasted coal falls automatically on the conveyor belt running close to the long wall face and the remaining 50 to 60 per cent of coal are being shovelled by the workers to the conveyor belts. Thus it is seen that almost half of the job of loading is done automatically which according to Shri S. C. Sarkar, not been disputed by the sponsoring union is taken into account for computing the output of face crews. That apart the workmen are not required to carry the blasted coal manually by baskets or by tubs to the loading point. In the last settlement arrived at between the management the Bihar Colliery Kamgar Union the work load of 3.5 tonnes per man per shift has remained unchanged, Ext. M-5. The management has produced photo copy of statement showing the rate of production per head per man shift of long wall face workers for the period from 12-2-83 to 31-12-83, Ext. M-6. It appears from this statement that in most of the cases the work load of 3.5 tonnes per head per shift have been achieved.

According to MW-2 Shri P. R. Sarkar, under NCWA-1 Group V wages were prescribed for miners working under conventional system or concerned workmen were given Group VA wages. He has further stated that the management added 12-1/2 per cent wages over their guaranteed minimum wages and in the process the wages of multi skilled worker per shift per day came to Rs. 14.62, i.e. 12-1/2 per cent over the minimum guaranteed wages of Rs. 13. He has further stated this system was followed with regard to the wage structure as per NCWA-II and III and This 12-1/2 per cent wages is in built in basic wages and counts for all purposes including bonus and other allowance. It appears that the management has increased the wage rate of the concerned workmen as per NCWA-II and III. The wage sheets Ext. M-9 series indicate that the concerned workmen are being paid 12-1/2 per cent over the guaranteed minimum wages as prescribed in NCWAs. This being the position there is no reason to hold that the Piece rated miners working on long wall face at Sudamdih Shaft Mine are not being paid wages in commensurate with their work load.

13. Considering the entire facts, circumstances and evidence on record I find that the demand of the workmen for reduction of work load from 3.5 tonnes per hand per day is not justified. It appears that the last settlement was arrived at between the management and the representative of Bihar Colliery Kamgar Union on 22-1-87, Ex. M-5. This settlement was arrived at in course of conciliation proceeding. Hence, it has got a binding effect. The settlement envisages that it will remain in operation till during the period covered by NCWA-III. Now, that NCWA-IV has come into effect from 1-1-87. It is considered neces-

sary that fresh settlement should be made with the union over the work load and rate of wages.

14. It has been contended by the management that the Coalfield Labour Union has no locus standie to raise the present industrial dispute. Admittedly Coalfield Labour is not recognised by the management. Even so, an un-recognised union may also raise the Industrial dispute provided it has got substantial following in the establishment. The ALC(C) was prima facie satisfied that the union has such following and referred the matter to the appropriate Government approving that the dispute by referred for adjudication. Hence the Contention of the management is not sustainable. Accordingly the following Award is rendered :—

“The demand of the workmen of Sudamdih Shaft Mine of Messrs Bharat Coking Coal Limited, Post Office Sudamdih, District Dhanbad that the workload of piece rated Miners employed at Long Wall Face should be reduced from 3.5 tonnes per head per day is not justified. Both the management and the workmen of Sudamdih Shaft Mine may explore further the matter of work load and wage rates in the context of NCWA-IV, come into force with effect from 1-1-87.”

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer.

[No. L-20012/239/81-D III(A):IR(Coal-1)]

का.प्रा. 1540.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, केन्द्रीय सरकार, मै. बी. सी. सी. एल. का मूनडीह प्रोजेक्ट के प्रबंधन में संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-91 को प्राप्त हुआ था।

S.O. 1540.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1 DHANBAD as shown in the Annexure in the industrial dispute between the employers in relation to the management of Moonidih Project of M/s BCCL and their workmen, which was received by the Central Government on the 2-5-91.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 144 of 1989

#### PARTIES :

Employers in relation to the management of Moonidih Project of M/s. B.C.C.Ltd.

#### AND

Their Workmen

#### PRESENT :

Shri S. K. Mitra, Presiding Officer.

#### APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 23rd April, 1991

#### AWARD

By Order No. L-20012/178/89-I.R. (Coal-J), dated, the 3rd November, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Moonidih Area of M/s. B.C.C. Ltd. in dismissing Shri Guhi Ram Mahato Sr. Store Keeper vide their Order No. MND/Dy. G.M/39/88/2262 dated 18/20-10-88 is justified ? If not to what relief the concerned workman is entitled ?”

2. The case of the management of Moonidih Project, as disclosed in the written statement submitted on behalf of the management of Moonidih Area of M/s. B.C.C. Ltd., details apart, is as follows :

The present reference is not maintainable. The substantive case of the management is that during the course of inspection of P&M Store on 1-6-88 it was detected that the scrap copper wires to the extent of 3.523 tonnes valued approximately at Rupees one lack forty thousand were found missing from the P&M Store. Guhiram Mahato, the concerned workman was the Senior Store Keeper of Regional Store; He was the Incharge of P&M Store and was custodian of all the items of store materials stocked in P&M Store. It was his duty to take reasonable steps to ensure safe custody of all the materials and to prevent theft, pilferage etc. of the material lying in the P&M Store. It was observed that the materials were stolen from that store with his connivance and due to his habitual or serious neglect of work. Since the above acts and omissions constituted serious misconducts under clauses 17(i)(a) and 17(i)(f) of the Certified Standing Orders, a chargesheet dated 20/21-6-1988 was issued to him. He submitted his reply dated 24-6-88 denying the charges levelled against him. Shri S. P. Singh, Personnel Manager of Moonidih Area was appointed as Enquiry Officer by letter dated 5/6-7-1988 of the Dy. General Manager. By the same letter Shri Santlal, Senior Store Officer was appointed as the Presenting Officer. The chargesheet was issued by the Area Manager (Technical) who is Agent under the Mines Act, 1952 and is competent to issue the chargesheet. The Dy. General Manager is Senior Officer to the Agent exercising the power of management, control, direction and supervision of the entire area is competent to appoint Enquiry Officer to conduct domestic enquiry. The concerned workman did not raise any objection



against the Enquiry Officer or the Presenting Officer. After several adjournments the enquiry was conducted and concluded in presence of the chargesheeted workman and his co-worker. The witnesses for the management were examined in his presence and the concerned workman was given full opportunity to cross-examine those witnesses. He did not raise any objection to the procedure adopted in the departmental enquiry. The enquiry was conducted in accordance with the principles of natural justice. The Enquiry Officer submitted his enquiry report on 13-8-88 to the Dy. General Manager. The General Manager of the Area, who is the Chief Mining Engineer of the Area, and is competent to dismiss the concerned workman, approved his dismissal from service. The concerned workman was dismissed from service by letter dated 18/21-10-88 issued under the signature of the Dy. General Manager who himself is competent to dismiss him being superior officer to the Manager and the Agent of the mine. In the circumstances, the management has prayed that the Tribunal be pleased to pass an award holding that the action of the management in dismissing the concerned workman from service is justified.

3. The case of the sponsoring union, Bihar Colliery Kamgar Union, as revealed in the written statement submitted by it on behalf of the concerned workman, briefly stated, is as follows.

Guhri Ram Mahato, the concerned workman, had been working as permanent Senior Store Keeper at Moonidih Project since long with unblemished record of service. He was an active member of Bihar Colliery Kamgar Union and the local management was very much biased and prejudiced against him for his union activities. The management with an ulterior motive to victimise him and to make him scapegoat and to save the skin of the guilty person, issued a false and frivolous chargesheet dated 21-6-88 against him. The allegation in the chargesheet was that during the course of inspection of P&M Store it was found allegedly that 3523 tonnes of scrap copper wires were allegedly missing from the Store. The charge against him was allegedly for not visiting the Godown frequently and for allegedly not keeping close watch on the materials lying therein on the ground that he was allegedly incharge of P&M Store. He was chargesheeted for alleged connivance with the alleged theft and for that reason the management invoked clauses 17(i)(a) and 17(i)(f) of the Certified Standing Order of the colliery. He submitted his reply denying the charges. Though the reply was satisfactory, even then the management rejected his representation without passing any speaking order and constituted an invalid and irregular enquiry. He submitted that the charges levelled against him in the chargesheet did not invoke the clauses as mentioned in the chargesheet and the allegations against him did not constitute misconduct as per provision of the Standing Order but the biased management did not pass any speaking order. He submitted that as per direction of the management he was incharge of Shed No. 6 which had about 3500 items of materials and besides that he was also looking after the P&M Shed. He further submitted that the pressure of work in Shed No. 6 was so high that it was not possible for a man to physically visit the P&M Store regularly. He further

submitted that in view of the aforesaid facts the arrangement was made that only at the time of necessity the P&M shed would be opened and that too in presence of CISF Jawans. He further submitted that he was on sanctioned leave from 10-5-88 to 19-5-88 and the P&M Shed was not opened during the period from 20-5-88 to 30-5-88 as there was no requirement for doing so. P&M Shed is guarded round the clock by C.I.S.F. Jawans and the same was also opened by other Store Keeper, Asstt. Store Keeper, Store Supervisor in his absence. On 1-6-88 the P&M Shed was opened in presence of D. N. Dhar, Dy. Materials Manager and K. K. Dutta, E.E. (E&M) and at that time copper wires were detected to be missing. The P&M Shed was opened on 31-5-88 by one Store Keeper in presence of Dy. Materials Manager and Store Supervisor. These persons detected cracks in the Asbestos shed of the roof of the Store and the same was informed to the management. The other Store Keepers and officers who opened one Stores before the alleged date of theft and who also remained present when the store was opened were neither chargesheeted nor any show cause notice was issued to them. The C.I.S.F. Jawans are required to be on vigil of the store round the clock and despite the fact the concerned workman has been charged with the allegation of theft of copper wire. Anyway, ignoring all these facts the management started empty formalities of domestic enquiry which was not held in accordance with the principles of natural justice. The Enquiry Officer was biased against the concerned workman who was found guilty in the invalid departmental enquiry and was dismissed from service by an unauthorised person. In the circumstances, the union has prayed that the order of dismissal of the concerned workman from service be set aside and the management be directed to reinstate him in service with full back wages.

4. In the rejoinder to the written statement of the sponsoring union, the management has denied the allegation of being biased against the concerned workman for his trade union activities. It has been asserted by the management that the domestic enquiry was held fairly and properly and the Enquiry Officer exonerated him from one count of charge and he was found guilty only on the second count of the charge. It has been denied that the charge was not established or that he was dismissed by an unauthorised person or that the Enquiry Officer was in any way biased against him.

5. In the rejoinder to the written statement of the management, the union has asserted that it is absolutely false and mischievous to submit that the materials were stolen from the Stores in connivance with the concerned workman. The union has reiterated that neither the General Manager nor the Dy. General Manager had any authority to dismiss the concerned workman from service and it is also false to submit that the General Manager was the Chief Mining Engineer of Moonidih Project.

6. At the instance of the management the fairness and propriety of the domestic enquiry was considered as preliminary issue.



The management examined Shri S. P. Sinha, Enquiry Officer and laid in evidence a mass of documents which were marked Exts. M-1 to M-11.

On the other hand, the concerned workman examined himself as a witness but did not adduce any documentary evidence.

7. At the time of hearing argument, Shri D. Mukherjee, authorised representative of the service concerned that the domestic enquiry was held fairly and properly. Since there was nothing on record militating against the fairness and propriety of the domestic enquiry, it was held that the domestic enquiry was held fairly and properly.

At the time of hearing on merits both the parties relied on the evidence already on record in order to prove their respective cases.

8. Admittedly, Guhi Ram Mahato, the concerned workman, was the Senior Store Keeper of Regional Store at Moonidih Area; he was also the Incharge of P&M Store, also of the said Area. It appears from the evidence of the concerned workman that he became Incharge of P&M Store from April, 1986. It is revealed from his evidence not disproved by any evidence, that charge was not made over to him nor had he taken charge of the said store formally. Anyway, the fact remains that he was put in charge of P&M Store from April, 1986.

The Enquiry Officer, as per the evidence of Shri R. N. Dhar, Dy. Material Manager (Purchase) in the domestic Enquiry, has stated that on 31-5-88 the Dy. Material Manager along with Shri N. Batabal, Chief Store Keeper and Sadananda Mahato, Store keeper went to find out some spare parts of Road header when cracks in the asbestos sheet of the Store was detected and this was duly reported to the General Manager in writing, and also to the Area Chief Civil Engineer for repair of asbestos sheet. None of these persons noticed any theft of copper wire when the P&M Store was opened on 31-5-88 at about 4 P.M. But on 1-6-88 the concerned workman opened the P&M Store in presence of Sri R. N. Dhar, Dy. Material Manager Sri K. K. Dutta, E.E. (E&M), Moonidih and noticed that scrap copper wire was missing and the matter was reported to Dy. Material Manager. It appears that the General Manager and Senior Administrative Officer were informed of the matter as the evidence of R. N. Dhar, Dy. Material Manager indicates.

It was on 20/22-6-88 that the chargesheet (Ext. M-1) was issued to the concerned workman on the following terms:

"During the course of inspection of P&M Store on 1-6-88 it was found that 3.523 tonnes of scrap copper wire was missing from there.

Being in-charge of the P&M Store it was your duty to visit the godown frequently and to keep close watch on the materials lying there. But during the course of preliminary enquiry it revealed that you did not visit the place since long and the theft of scrap copper wire from P&M Store was committed with your connivance.

Your above action constitutes misconduct under Clause 77(i)(a) and 17(i)(f) of the Certified Standing Order, which read as follows:—

17(i)(a) "Theft, fraud or dishonesty in connection with the employer's business or property".

17(i)(f) : "Habitual or serious neglect of work."

You are requested to submit to the undersigned a written explanation within three days of the receipt of this chargesheet showing cause as to why disciplinary action amounting even to dismissal should not be taken against you for committing the above mentioned act of misconduct."

The concerned workman submitted his reply to the chargesheet (Ext.M-2) elaborately. The relevant portion of his reply is re-produced herein below :

"I deny all the charges emphatically. I am being made scape-goat to save the skin of actual guilty person.

I am not only the incharge P&W shed but also shed No. 6 which have about 3500 items. We are overburden with the work-pressure of shed No. 6. So as the normal practice in past whenever material from P&M shed is required only then we open the shed and issue the materials on demand. However, I personally check the lock & seal of P&M shed whenever I get time. Although this practice is continuing since inception of P&W shed. No such directive has been issued in past that P&W shed is to open daily. The charge that I have not visited the P&M shed since long at the time of theft is also not correct as I was out of station on account of duty granted leave from 10-5-88 to 19-5-88 since no requirement of P&M shed came from 20-5-88 to 30-5-88 so as usual I have not opened the shed but I have checked lock & seal on my Connivance.

It is pertinent to mention that the P&M shed is situated far away from the main Regional Stores Area. It is only open in the event of necessity for the interest of mines and that too in presence of CISF Jawan and same also is closed after property locking & sealing in presence of CISF Jawan on duty. It is also pertinent to mention that the P&M shed is being guarded by CISF Jawan.

It is also pertinent to mention that the P&M shed is also been opened by other Stores Keepers, Asstt. Store Keepers and Store Supervisor in my absence as because other shed's materials, charged off on account of E&M Deptt/Mines, are also kept in P&M shed by the directive of the management since long time.

It is also pertinent to mention that on 1-6-88 I have opened the P&M shed in presence of Sri R. N. Dhar, Dy. M.M. & Sri K. K. Dutta, E.E.(E&M), Moonidih as per their

direction. After opening the shed the missing of scrap copper wire was detected by me and informed the matter to Dy. M. M. in P&M shed.

It may not be out of place to mention that on 31-5-88 the P&M shed was opened by one store keeper in presence of Dy. M.M. and store supervisor.

It may not be out of place to mention that the aforesaid persons had checked the P&M shed on 31-5-88 and had reported the matter of crack asbestos shed on the roof.

It is absolutely false to allege that the theft of scrap copper wire about 3.523 tonnes had been committed with my connivance.

If the allegation framed against me vide above charge sheet are considered correct it is not understood how further theft has occurred inspite of total alertness from management and security side.

This proves that it is no fault on my part in any case, but due to the failure of management and security lapses and I am being unnecessarily harassed and dragged in to matter to save actual guilty persons.

The chargesheet is vague so it is not possible for me to submit my reply properly because it does not disclose the name of alleged persons allegedly with whom I had allegedly connived for the alleged theft."

9. After analysing the chargesheet it appears that the charge against the concerned workman was that (i) he did not visit the place (P&M Store) since long and (ii) theft of scrap copper wire from the P&M Store was committed with his connivance and that the above act of his constitute misconduct under Clause 17(i)(a) : theft, fraud or dishonesty in connection with the employer's business or property and under Clause 17(i)(f) : habitual or serious neglect of work. The Enquiry Officer, after holding the enquiry, has come to the conclusion that there was no material on record to prove that the theft was committed with the connivance with the concerned workman and hence the charge of theft, fraud or dishonesty in connection with company's business or property was not established. Even so, he held the concerned workman guilty of the charge of misconduct of neglect of duty as (i) he did not arrange for lighting in the godown; (ii) did not open the Store regularly and (iii) did not arrange stock verification. But the charge against the concerned workman was not for his failure to arrange for lighting in the godown or for not arranging stock verification. Thus, it is obvious that the Enquiry Officer has acted beyond his jurisdiction when he held the concerned workmen guilty of the charge of his failure to arrange for lighting in the godown and for his failure to arrange stock verification as no such allegations have been made in the chargesheet itself.

10. The Booklet entitled Nomenclature job description and Categorisation of Coal employees issued by the Joint Bipartite Committee for the Coal Indus-

try does not envisage the job description of store personnel including Senior Store Keeper, Store Keeper, but that has been provided in the manual entitled Material Management Manual Part-II. Clause 2.6(b)(xii) of the Manual envisages among others, that it is responsibility of Dy. Material Manager to arrange departmental stock verification of materials in Regional Area Stores and : (a) reconcile discrepancies, if any and (b) prepare loss statements for obtaining write-off sanctions from the competent authority. Cl. 2.8(a) of the said Manual envisages that the custodial responsibility for the stores held in a Stores Depot will devolve upon the stores personnel employed therein in proportion to the grade of each employee and the money value of stores entrusted to his charge. The duties of Chief Store-Keeper/Senior Store Keeper as envisaged in Clause 2.8(c) includes arranging timely departmental stock verification of materials and reconciliation of discrepancies. Thus, it is seen that arranging for departmental stock verification is much as the duty of Chief Store Keeper/Senior Store Keeper as that of Dy. Material Manager. Admittedly departmental stock verification has not been done for a pretty long time. So, the concerned workman as Senior Store Keeper is as much responsible for dereliction of duty on that score as the Chief Store Keeper and Dy. Material Manager. It has remained inexplicable as to why these two officials, namely, Chief Store Keeper and Dy. Material Manager have not been visited with chargesheet for dereliction of duty on this score and why the concerned workman was singled out for the purpose. Anyway, the fact remains that the concerned workman was not visited with chargesheet for dereliction of duty on account of (a) his failure to arrange stock verification and also (b) for failure to arrange for lighting in the P&M Store. There is nothing on record to indicate that arrangement for lighting in the P&M Store was the duty of the concerned workman. It can be comprehended that it is the duty of the Maintenance Department, if there be any, to ensure proper lighting of the premises of the management including P&M Store.

The charge of failure to make arrangement for verification of store to which the concerned workman was found guilty of by the Enquiry Officer has not been spelt out in the chargesheet. In my view, the Enquiry Officer exceeded his jurisdiction in holding the concerned workman guilty of the charge of neglect of duty on this score when this has not been spelt out in the chargesheet. Besides, the other two officers, namely, Dy. Material Manager and Chief Store Keeper were as much responsible for their failure to arrange for store verification as the concerned workman was, and for inexplicable reasons, these two officials were not proceeded against for their delinquencies.

11. Now, it remains to be seen whether the concerned workman was guilty of the charge of his failure to open the store regularly as the Enquiry Officer has held him so. It does not appear from the Manual as aforesaid that it was the duty of the concerned workman chargesheet. Besides the other two on this score when this has not been spelt out in the

concerned workman as Senior Store Keeper to open the store regularly. A joint investigation was made after the theft by S/Shri R. N. Dutta, Dy. Material Manager, V. K. Isar, Asstt Commandant, C.I.S.F., B.G. Biswas, Senior Section Officer and N. Batamal, Chief Store Keeper and the report submitted by Shri R. N. Dhar and Shri Shamlal suggested the following remedial measures among others : (i) Shed Incharge of P&M Godown should regularly open the store for check up and (ii) periodical stock verification of items should be carried out and shed Incharge would maintain separate record for the same to have proper accountability. This joint inspection report reveals that the opening of store regularly was not a part of duty of the Senior Store Keeper. It is common perception that simply opening the store regularly does not serve any meaningful purpose unless items in the stores are inspected regularly. The concerned workman has stated in his reply to the chargesheet that about 3500 items were kept in Regional Store and, various other items of materials admittedly were kept in P&M Store. In this context Shri Dhar stated, in answer to cross-examination by the concerned workman, that it is not possible to inspect all the 5000 items daily.

12. Upon consideration of material and evidence on record, I am of the opinion that the charge against the concerned workman for his neglect of duty has not been proved satisfactorily. That being so, the concerned workman is entitled to be exonerated of the charge and to be reinstated in service after setting aside the order of dismissal.

13. Shri D. Mukherjee, authorised representative of the union, has submitted that Dy. General Manager has no authority to issue order of dismissal against the concerned workman. Shri B. Joshi, learned Advocate for the management submitted in reference to Delegation of Power that the Dy. General Manager has such authority. Delegation of Power envisages that Chairman-cum-Managing Director delegated the power of disciplinary action to the General Manager of the Area and after approval of the General Manager of the Area, the Dy. General Manager issued the order of dismissal of the concerned workman from service. This being the position, I am constrained to hold that the order of dismissal as clamped down by the General Manager is quite competent. Even so, in view of my finding as above, the order of dismissal itself is not sustainable.

14. Accordingly, the action of the management of Moonidih Area of M/S B.C.C. Ltd. in dismissing Shri Guhi Ram Mahato, Senior Store Keeper, from service by order date 18/10-11-88 is not justified. The order of dismissal of the concerned workman from service is hereby set aside and the management is directed to reinstate him in service with effect from the date of his dismissal and to pay him back wages at the rate of 75 per cent of his normal wages.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer  
[No. L-20012/178/89-IR(Coal-I)]

का. आ. 1541.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैनरा बैंक के प्रबंधन से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-5-91 को प्राप्त हुआ था।

S.O. 1541.—In Pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, BOMBAY as shown in the Annexure in the industrial dispute between the employers in relation to the management of CANARA BANK and their workmen, which was received by the Central Government on the 3-5-91.

### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT BOMBAY.

PRESENT:

Shri P. D. Apshankar, Presiding Officer.  
Reference No. CGIT-2/9 of 1986

PARTIES :

Employers in Relation to the Management of  
CANARA BANK

AND

Their Workmen.

APPEARANCES :

For the employers:—Shri R. S. Pai, Advocate.

For the workmen.—Shri Madan Phadnis,  
Advocate.

INDUSTRY:—Banking.

STATE:—Maharashtra.

Bombay, the 27th March 1991.

### AWARD—PART I

The Central Government by their Order No. L-12012/107/85-D.II(A) dated 14th February 1986 have referred the following Industrial Disputes to this Tribunal for adjudication under Section 10(1) (d) of the Industrial Disputes Act 1947 :

“Whether the action of the management of the Canara Bank in relation to its Matunga (East) Branch Bombay, in terminating the

services of Shri Mohan N. Mahavarkar, Peon is justified? If not, to what relief is the workman concerned entitled?

2. The case of the Canara Bank Staff Union, as disclosed from the statement of claim (Ex.2) filed by its General Secretary, in short, is thus :

[The workman Shri Mohan N. Mahavarkar was appointed as a Peon in the Canara Bank in 1972. On 20-12-1980 the charge sheet was issued to him by the Deputy General Manager of the Bank.

3. In substance it was alleged against him thus :

On 19-12-1980 he reported for duty at 9.05 a.m., even though his duty hours commenced from 8.30 a.m. By the time he reported for duty, alternative arrangement was already made by engaging a Daily Wager, and he was instructed not to sign the attendance register. However, in spite of the said instructions, he continued reporting for duty. He said that the Bank may deduct the wages of 35 minutes. Thereafter he went to the Sub-Manager and demand for a telephone instrument. Thereafter he pushed away the things and papers that were lying on the table of Sub-Manager. The Sub-Manager protested against the said behaviour of the workman, and asked him to keep the papers at the proper place, and not to disturb the table arrangement. However, the workman snatched the telephone instrument and used vulgar language in Hindi.

4. The Union further alleged in the statement of claim thus :

In the charge sheet issued to the Workman, the Deputy General Manager had referred to several alleged instances in the past even though he was exonerated of all those earlier charges and allegations. Shri T. Krishana Rao was appointed as Enquiry Officer in the inquiry proceedings held against him. The Enquiry Officer by his report dated 18-11-1981 held him guilty of the charges levelled against him. Thereafter the Deputy General Manager by his Order dated 29-9-1982, discharged the Workman from the services of the Bank. After the charge sheet was issued, the Workman was immediately suspended from service. Against the Order of discharge, the Workman preferred an appeal to the Chairman of the Board of Directors. However, it was dismissed by the Deputy General Manager by the Order dated 14-8-1984. Thereafter the Union raised an Industrial Dispute before the Regional Labour Commissioner. As the conciliation proceedings ended in failure, the Central Government made the reference to this Tribunal, as above.

5. The Union further alleged thus :

[The Enquiry Officer started the enquiry proceedings with predetermined mind to dismiss him. He had assumed upon himself the role of prosecutor and that of the disciplinary authority. After the charge sheet was issued to the Workman, he was not given an opportunity to put in his say regarding the allegations made against him. However, he himself put in his say to that charge sheet. While conducting the enquiry, the rules of natural justice were not followed. The Enquiry Officer had a bias against him, and he was not acting as an independent authority. The Enquiry Officer himself brought on record a written complaint of the Branch Manager, even the Branch Manager was not a witness to the incident in question. The Enquiry Officer himself called for a witness who was not cited by the Bank Management. The Enquiry Officer cross examined the Workman, and as such exceeded his jurisdiction. The findings of the Enquiry Officer are not based on the evidence on record, but they are contrary to it. During the course of the enquiry proceedings, four witnesses were examined on behalf of the Bank Management. The Workman examined himself before the Enquiry Officer and examined two more witnesses on his behalf. However, while recording the findings, the Enquiry Officer totally ignored the evidence of the defence witnesses.

6. The Union further alleged thus :

On the day of the incident i.e. 19-12-1980, the Workman had come late and had explained the reasons of his late attendance. On that day, one another employee of the Bank had come still more late, but that employee was allowed to resume his duty by the Management, while the Workman who came earlier than that employee, was not allowed to resume his duty. That other employee who was allowed to resume his duty, was an active member of Canara Bank Employees Union, a Union recognised by the Bank. However, the Workman in question was an active member of the Canara Bank Staff Union, disliked by the Bank. As such, a discriminatory treatment was given by the Bank Management to the two employees of the Bank. Further, mere late attendance is not a misconduct, either a major or a minor under the service rules. Only a habitual late attendance constitutes a minor misconduct, and it is to be established by holding the necessary enquiry in that respect. As such, the action of the Bank Management in the matter is illegal and unjust.

## 7. The Union further alleged thus :

The Bank Management did not try to find out the reasons of the late attendance of the workman in question but he was asked to go out, not on the ground that the reasons for his late attendance were not satisfactory, but on the ground that a substitute was already appointed in his place. The Enquiry Officer had also held a final enquiry to decide the quantum of punishment when he had no such business or jurisdiction to do so. The Workman had put in nine years of service before his discharge and his past record was also totally ignored, and was not taken into consideration while imposing the said punishment upon him. Therefore, the Union lastly urged that this Tribunal should hold the action of the Bank Management as unjust and improper and should direct the Bank Management to reinstate the Workman in question in service.

## 8. The Canara Bank by their written statement (Ex. 3) opposed the said claim of the Union, and in substance contended thus :

Shri Mohan N. Mahavarkar was appointed as a Peon in the Bank in May 1972. The charge sheet was issued to him on 20-12-1980. The necessary enquiry was held against him, after following the rules of natural justice and after giving him full opportunity to defend himself. The Enquiry Officer found the Workman guilty of the charges levelled against him. The workman was thereafter discharged from the services of the Bank. Thereafter the Workman filed an appeal with the Appellate Authority, which came to be dismissed.

## 9. The Bank further contended thus :

It is not true that the Enquiry Officer acted as a prosecutor. The Enquiry Officer was competent to recommend the quantum of punishment under the Service Code of the Bank. The reference to the earlier charges in the present charge sheet is only by way of recital, and indicates previous opportunity given to the Workman. It is not true that the Disciplinary Authority had a bias against the Workman. In the charge sheet, it was mentioned that the Workman should submit his explanation as to why the disciplinary action should not be taken against him, and why the appropriate punishment should not be imposed upon him. By taking the written complaint from the Branch Manager on record during the enquiry proceeding, no prejudice was caused to the Workman, and the rules of natural justice were not thereby violated. It is not true that the Enquiry Officer had a bias against the Workman. The Enquiry Officer is entitled to call for a witness suo motu for the proper conduct of the enquiry. It is

not true that the Enquiry Officer cross examined the witnesses. Questions were put by the Enquiry Officer to the witnesses only for the purpose of clarification of their evidence. It is not true that the Enquiry Officer ignored the evidence of the Workman and of his witnesses while submitting his report. It is not true that the Enquiry Officer started the enquiry with the predetermination to hold the Workman guilty of the charges.

On 19-12-1980 the Workman and other employee Shri Phadke attended to their duty late. The other employee Shri Phadke was allowed to resume his duty on that day as he belonged to the category of clerical staff, whereas the Workman belonged to category of sub-staff. The charge levelled against the Workman was not of habitual late attendance, but they were of wilful insubordination, disobedience of lawful and reasonable orders of the superiors, and of disorder and indecent behaviour on the premises of the Bank. As the workman came to the Bank late on the said date, a substitute was already appointed in his place and making a substitute arrangement is totally a discretion of the Bank Manager for the exigencies of business. The Bank Management lastly contended that the Workman is not entitled to any relief, and this Tribunal should hold the action of the Bank Management as just and proper, and should reject the prayer of the Workman.

## 10. The Issues framed at Ex. 5 are :

1. Whether the Workman proves that the Inquiry Officer was proceeding on the assumption that he was to record a finding of dismissal against the Workman ?
2. Whether the charge sheet issued against the Workman contained incorrect and irrelevant matters of his past service ?
3. Whether no proper opportunity to defend him etc, as per the First Bipartite Settlement, was given to the Workman, before the charge sheet was issued to him ?
4. Whether the mentioning of the incidents dated 27-12-1977, and 14-1-1980 in the charge sheet issued against him, was irrelevant for the purpose of the inquiry against him ?
5. Whether the Inquiry Officer did not hold the inquiry against the worker properly, and the rules of natural justice were not followed ?
- 5A. Whether the Workman proves that the inquiry held against him was not held properly and the rules of natural justice, and the Regulations applicable to the establishment Bank were not properly followed ?
6. Whether the action of the management of the Canara Bank in relation to its Matunga (East) Branch Bombay, in terminating the

services of Shri Mohan N. Mahavarkar, Peon is justified ?

7. If not, to what relief is the Workman concerned entitled ?

8. What Award ?

11. The Issues Nos 1. to 5A were tried as Preliminary Issues.

12. My findings on those Issues are :—

1. No
2. No
3. Proper opportunity given.
4. No
5. Held properly.
- 5A. No

#### REASONS

13. The Workman Shri M. N. Mahavarkar filed his affidavit at Ex. 6, and filed a further affidavit at Ex. 10 in support of his case. He was cross examined in respect of both these affidavits on behalf of the Bank management. The workman examined two more witnesses on his behalf. The workman's representative Shri K. S. Menon filed his affidavit at Ex. 8, and the Union Secretary Shri G. M. V. Nayak filed his affidavit at Ex. 12. Both these witnesses were cross examined on behalf of the Bank management. No oral evidence was led on behalf of the Bank management.

ISSUE Nos. 2, 3 and 4 :

14. The allegations made in the charge sheet dated 20-12-80 against the Workman were thus :

"On 19-12-1980, he reported for duty at 9.05 a.m. even though his duty hours commenced at 8.30 a.m. An alternative arrangement was already made by engaging a daily wager. As such, he was asked not to sign attendance register. In spite of that, he signed the attendance register and said that the Bank may deduct his wages of 35 minutes. Thereafter, he went to see the Sub-Manager Shri M. M. Sarvaiya and demanded the telephone instrument from him. In that process he pushed away the things and papers that were lying on the Sub-Manager's table. When the Sub-Manager protested against this, he gave very vulgar abuses to him in Hindi. Thereafter, he snatched away a letter from the hands of the Sub-Manager and threw it away. He also pushed down the empty coffee glass and the dictionary that were on the table and broke the coffee glass. His abovesaid behaviour amounted to wilful insubordination and disobedience of lawful and reasonable orders of the superior officers, and he thereby committed gross misconduct contemplated under Regulation 3, Chapter 11 of the Canara Bank Service Code, and he also committed an act prejudicial to the interest of the Bank."

15. While enumerating the particulars of the charge against the Workman, the Deputy General Manager also firstly referred in that charge sheet to certain two earlier charge sheets issued to him. It has

been mentioned in the charge sheet that a charge sheet dated 27-12-1977 was issued to him for certain acts of misconduct, such as, reporting late for duties, forcibly driving away the daily wagers engaged in his place, not performing the duties allotted to him and for indecent and disorderly behaviour in the premises of the Bank. The Workman was suspended from service after that charge sheet was issued to him. Later on that suspension order was withdrawn by the Bank management by the Order dated 9-6-1978, and he was reinstated in service. Reference has also been made in the charge sheet in question to one more charge sheet dated 14-1-1980 issued to him and he was again suspended from service. However, that suspension order was again withdrawn, and the workman was reinstated in service from 4-8-1980. After mentioning the said two charge sheets issued against the Workman in the present charge sheet, it was further stated that in spite of his suspension on two occasions, and reinstatement back in service, he did not show any improvement in his behaviour, and thereafter committed the misconduct on 19-12-1980 as mentioned above.

16. It was urged on behalf of the Workman that no mention should have been made in the present charge sheet dated 20-12-1980 to the two earlier incidents and the charge sheets, and that this mentioning is incorrect and irrelevant. I find that the mentioning regarding the two earlier charge sheets should have been made after the inquiry regarding the present charge sheet in question was over, and in case the Workman was found guilty of the charge framed against him. The earlier two alleged incidents should have been taken into consideration and should have been mentioned at the time the question of his proposed punishment, if any, was being considered. Admittedly no enquiry was held by the Bank management regarding the earlier two charge sheets. The Workman had also not admitted those charges levelled against him, and no assurance of good conduct on the part of the Workman was given by his Union before the Bank management. While issuing the charge sheet dated 20-12-1980 in question, the Workman was asked to put in his say to that charge sheet within 3 days of the receipt of that charge sheet. The period of 3 days has been mentioned as per the provisions of the Canara Bank Service Code. However as per the provision of First Bipartite Settlement, sufficient opportunity is to be given to the Workman to put in his say to the charge sheet. I find that the provisions of the Bipartite Settlement will prevail over the Service Code of the Canara Bank, and as such, sufficient opportunity and not only 3 days' time should have been given to the Workman to put in his say to the charge sheet issued against him. However, only because of the said infirmity and the defect in the enquiry proceedings, the whole of the enquiry proceedings conducted against him cannot be considered as bad in law or illegal. In the present case the Workman was allowed to be defended by his representative, and the Union Secretary had represented and defended him during the enquiry proceedings, and had cross-examined the Management witnesses at great length. The Workman had put in his say in writing at great length when the question of the punishment against him was being considered by the enquiry officer. I do not, therefore, find that the mentioning of

the earlier two incidents dated 27-12-1977 and 14-1-1980 in the charge sheet was incorrect or irrelevant, and I find that proper opportunity was given to him to defend himself before the Enquiry Officer in respect of the inquiry held against him. Issues Nos. 2 and 4 are therefore, found in the negative. The findings on issue No. 3 is that proper opportunity to defend him self was given to the Workman, before the charge sheet was issued to him.

#### ISSUE NO. 1 :

17. According to the Workman, the Enquiry Officer was proceeding on the assumption that he was to record a finding of dismissal against him. However, there is absolutely no material on the record to come to this conclusion. I find that the Enquiry Officer had absolutely no bias against the Workman and the findings of the Enquiry Officer are just and proper and not perverse, and are based on the evidence on record. Issue No. 1 is, therefore, found in the negative.

#### ISSUE Nos. 5. & 5A :

18. As per the provisions of the Bipartite Settlement of 1966, the enquiry proceedings are to be entered into a book kept specially for the purpose. In the present case the enquiry proceedings are entered into, and written on loose paper sheets. However, this infirmity is also of a minor nature. All the papers now taken together constitute a book. According to the Workman, while conducting the enquiry the Enquiry Officer was acting as a prosecutor also. Admittedly no presenting officer had appeared on behalf of the Bank management. However, the only question asked by the Enquiry Officer to the management witnesses is as to what they had to say about the matter. Except that, he did not ask any more question to any of the witnesses. Further he did not cross examine the Workman or his witnesses. Therefore, I do not find that the Workman had acted as a prosecutor also, in addition to his duty as a Judge.

19. Admittedly, before the charge sheet was issued to the Workman, he was given an opportunity to put in his say about the domestic enquiry proposed to be held against him. During the enquiry proceedings the Workman was defended by the representative who cross examined all the management witnesses at great length. The Workman gave his statement before the Enquiry Officer, and examined two more witnesses on his behalf. The Workman was heard about the proposed punishment before the punishment was imposed upon him. Against the order of the Duty General Manager dated 30-9-1982 discharging the Workman from service, the Workman filed an appeal to the appellate authority which came to be dismissed after an opportunity was given to the Workman, and his defence representative of being heard in person. It was dismissed by the Chairman of the Bank by his order dated 25-7-1984. Therefore, even though there are a few infirmities and defects in the enquiry proceedings, which in my own opinion are of minor nature, taking into consideration all the enquiry proceedings as a whole, I find that the enquiry proceedings were held properly and as per the rules of natural justice, and the regulations applicable to him and the management.

20. Issues No. 5 and 5A are, therefore, found accordingly.

P. D. APSHANKAR, Presiding Officer  
[No. L-12012/107/85-D.II(A)]

K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 10 मई, 1991

का. आ. 1542.—लौह अयस्क खान, मैंगनीज अयस्क खान और क्रोमियम अयस्क खान श्रम कल्याण निधि नियम, 1978 के नियम 16 और 3 के उप नियम (2) के साथ पठित लौह अयस्क खान, मैंगनीज अयस्क खान, और क्रोमियम अयस्क खान श्रम कल्याण निधि अधिनियम, 1976 (1976 का 60) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार इसके द्वारा भारत के राजपत्र के भाग-II, खंड 3, उप खंड (ii) के पृष्ठ 110 पर 12 जनवरी, 1991 को प्रकाशित भारत सरकार श्रम मंत्रालय की दिनांक 28 दिसम्बर, 1990 की अधिसूचना संख्या का. आ. 116 में निम्नलिखित संशोधन करती है।

#### संशोधन

उपर्युक्त अधिसूचना के क्रमांक 5 और उसके सामने लिखी प्रविष्टि के स्थान पर निम्नलिखित क्रमांक और उसके सामने निम्नलिखित प्रविष्टि पढ़ी जाये, अर्थात् :—

“5. श्री दसरथी जेना, सदस्य”  
सदस्य, विधान सभा,  
आनन्दपुर, केओन्धार जिला उड़ीसा

[सं. य-19012/13/88-उन्व. II(सी)]

वी. डी. नागर, अवसर सचिव

New Delhi, the 10th May, 1991

S.O. 1542.—In exercise of the powers conferred by section 5 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 (60 of 1976), read with sub-rule (2) of rule 3 and rule 16 of the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Rules, 1978, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour No. S.O. 116, dated the 28th December, 1990, published at page 110 of the Gazette of India, Part II, section 3, sub-section (ii), dated the 12th January, 1991.

#### AMENDMENT

In the said notification, for serial number 5 and the entry thereagainst, the following serial number and entry thereagainst shall be substituted, namely :—

“5. Shri Dasarathi Jena, Member, Legislative Assembly, Anandapur, District Keonjhar, Orissa. .... Member

[No. U-19012/13/88-W.II(C)]  
V. D. NAGAR, Under Secy.

